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Friday, 28 November 2003

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

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.01 a.m.)—by leave—I move:

That, on Friday, 28 November 2003:

(a) the hours of meeting shall be 9 am to 3.40 pm; and

(b) the question for the adjournment of the Senate shall be proposed at 3 pm.

Question agreed to.

NOTICES

Presentation

Senator Brandis to move on the next day of sitting:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 1 December 2003, from 4.30 pm, to take evidence for the committee’s inquiry into the Financial Services Reform Amendment Bill 2003 and related matters.

Senator Ferguson to move on the next day of sitting:

That the time for the presentation of the report of the Parliamentary Joint Committee on ASIO, ASIS and DSD on intelligence information received by Australia’s intelligence services in relation to weapons of mass destruction be extended to 1 March 2004.

Senator Conroy to move on the next day of sitting:

That there be laid on the table by the Minister representing the Treasurer, no later than 3 pm, Thursday, 4 December 2003, any documents prepared by the Department of the Treasury in relation to:

(a) the operation of the First Home Owner Grant scheme;

(b) information on the impact of ‘bracket creep’; and

(c) baseline information used in the preparation of the Intergenerational Report 2002-03 (Budget Paper No. 5).

Withdrawal

Senator NETTLE (New South Wales) (9.01 a.m.)—I withdraw general business notice of motion 718 standing in my name for 1 December.

Senator TCHEN (Victoria) (9.02 a.m.)—Pursuant to notice given at the last day of sitting on behalf of the Standing Committee on Regulations and Ordinances, I now withdraw business of the Senate notice of motion No. 1 standing in my name for two sitting days after today.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Meeting

Senator FERRIS (South Australia) (9.02 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 the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 11 am to 1 pm, to take evidence for the committee’s inquiry into the draft Aviation Transport Security Regulations 2003.

Question agreed to.
DEFENCE LEGISLATION AMENDMENT BILL 2003

COMMONWEALTH ELECTORAL AMENDMENT (MEMBERS OF LOCAL GOVERNMENT BODIES) BILL 2002

ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) AMENDMENT BILL 2003

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.03 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 CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.04 a.m.)—I move:

That these bills be now read a second time.

I seek leave to incorporate the second reading speeches in Hansard.

Leave granted.

The speeches read as follows—

DEFENCE LEGISLATION AMENDMENT BILL 2003

This bill makes various amendments to Defence legislation. It also makes consequential amendments to other Commonwealth legislation. The amendments indicate the Government’s ongoing commitment to the Defence Organisation and Service personnel.

The bill will:

• increase the penalties for breaches of sections 80A and 80B of the Defence Act, relating to persons who falsely represent themselves to be returned service personnel, or improperly use service medals or decorations;

• make various amendments to the Defence Force Discipline Act, including the implementation of recommendations made by Brigadier Abadee, the Deputy Judge Advocate General, in relation to the military discipline system;

• make amendments to modernise the titles of the Cadet Corps;

• clarify the regulation-making powers in relation to Defence inquiries;

• make amendments to the Defence Force (Home Loans Assistance) Act to permit certain classes of ex-members of the Australian Defence Force to apply for a home loan subsidy beyond the current 2 year eligibility period for claiming assistance; and

• correct two minor drafting errors.

All the measures are outlined in the bill’s explanatory memorandum.

There are two major measures included in the bill.

The first relates to changes to increase the penalties for improper use of service medals and decorations and for false representation as returned service personnel. These changes reflect the gravity of the concern of the Government and the wider community with practices that are unlawful, deceitful and disrespectful of our veterans and service personnel.

The bill increases the penalty for wrongly claiming to be a returned soldier, sailor or airman, or for wearing a medal or decoration to which a person is not entitled from a $200 fine, to a maximum penalty of $3300 and/or 6 months imprisonment. The Defence Act already makes it clear that an exception to this penalty is where a family member, who does not claim to have been awarded the medal or decoration, is wearing the medal or decoration. The bill also increases the penalty for destroying or defacing a medal or...
decoration from a fine of $200, to a maximum fine of $6,600 and/or 12 months imprisonment. Persons falsely claiming defence service they did not undertake or complete, or medals or decorations they were not entitled to, are disrespectful to real veterans and Defence personnel. Our veterans and serving personnel are held in the highest regard by our community. Their service and sacrifice deserves strong protection from those who wrongly seek to claim the same honour and respect. The Government delivers this protection through these increases in penalties.

The second measure deals with changes to the Defence Force Discipline Act. The most significant changes to the Act give effect to the recommendations of Brigadier Abadee, who is also a Justice of the Supreme Court of New South Wales. Brigadier Abadee was commissioned by the Chief of the Defence Force to make recommendations to ensure that the military discipline system satisfies contemporary standards of judicial independence and impartiality. The changes to the Defence Force Discipline Act implement the necessary measures to achieve that aim.

The bill will eliminate the multiple roles of convening authorities to ensure that the officer who convenes a court martial, or refers a charge to a Defence Force magistrate for trial, has no role in the subsequent review of the outcome.

The bill will also provide that the Judge Advocate General will be responsible for nominating officers to act as judge advocates for courts martial and for nominating officers as Defence Force magistrates for trials, rather than the current procedure which involves such appointments being made by the military chain of command.

In addition, the bill will enable the Judge Advocate General to appoint the President and members of courts martial as opposed to the chain of command, and create the statutory position of Chief Judge Advocate. The Chief Judge Advocate will assist the Judge Advocate General in the execution of the functions and powers of the Judge Advocate General’s office. This will be in addition to the Chief Judge Advocate sitting as a Defence Force magistrate or a judge advocate at a court martial.

COMMONWEALTH ELECTORAL AMENDMENT (MEMBERS OF LOCAL GOVERNMENT BODIES) BILL 2002

The bill amends the Commonwealth Electoral Act 1918 and seeks to ensure that eligible members of a local government body do not suffer any penalty arising from their decision to stand as a candidate for election to either the Senate or House of Representatives.

The bill amends section 327 of the Commonwealth Electoral Act 1918 by inserting new subsections providing that a law of a State or Territory has no effect to the extent to which the law discriminates against a member of a local government body who has been, is, or is to be nominated or declared as a candidate in a Federal election.

Such an amendment is necessary following the enactment of section 224A(b) of the Queensland Local Government Act 1993 which purported to declare vacant the office of a local councillor at the point of their nomination as a candidate in a Federal election. Following a challenge to this provision, the Queensland Court of Appeal ruled, in November 2001, that section 224A(b) was beyond the legislative competence of the Queensland Parliament and was unconstitutional.

This amendment to the Commonwealth Electoral Act 1918 is necessary to reinforce the Commonwealth’s authority to legislate exhaustively (subject to the Constitution) on qualifications for election to the Commonwealth Parliament.

The Government considers that eligible people should be able to stand for election without suffering any penalty. The Government is acting to defend eligible people’s rights to take part in Australia’s democratic processes, and will not permit States or Territories to restrict this fundamental right.

I commend the bill to the Senate.

ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) AMENDMENT BILL 2003

The primary purpose of this bill is to give effect to a request by the Wreck Bay Aboriginal Community Council (‘the Council’) for legislative changes to certain administrative procedures that
are provided for in the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 ("the Land Grant Act"). The bill includes amendments to the Council’s quorum requirements and the provisions relating to the presentation of by-laws.

The Land Grant Act establishes the Council for the purposes of holding land, providing community services, managing and maintaining Aboriginal land and related functions at Wreck Bay. The Jervis Bay Territory is located near Nowra on the southeast coast of New South Wales. Approximately 92% of the Jervis Bay Territory has already been granted as Aboriginal land under the Land Grant Act and the remaining 8% is currently the subject of a claim under the Act.

Sections 20 to 24 of the Land Grant Act make provision for the calling of general meetings, through which the Council elects its membership and executive, sets its annual budget and transacts its business. Section 25 requires that a majority of members must attend in order to form a quorum. The Council has advised that they have experienced difficulties in securing the required quorum at such meetings. There are currently 257 members of Council and achieving the required quorum of 129 members has proven virtually impossible.

Section 26A of the Act provides for a diminished quorum of members in the case of reconvened annual general meetings, where the initial AGM has failed due to no quorum. The Council has advised that even the lower quorum provisions for reconvened AGMs have proven unworkable and that rarely is it possible to achieve an attendance of more than 50 to 60 members. Therefore even the reconvened meetings have failed to attract sufficient numbers to enable the Council to conduct its meetings and to effect urgent business. This has disrupted the effective operation of the Council.

In order to increase the likelihood that a quorum will be achieved at the first reconvened meeting and to reduce the risk of a succession of failed reconvened general meetings this bill will amend the provisions of section 26A to provide that if the annual or a special general meeting fail to convene because of the lack of a quorum, the quorum for the purposes of any reconvened general meeting will be 40 members. The simple majority provisions will be retained for the purposes of constituting a quorum at all general meetings when first called because the Council is of the view that all, or at least the greatest possible number of, members should be invited and encouraged to attend any and all general meetings of Council.

The bill will also amend the provisions of subsection 52A(10) of the Land Grant Act. Section 52A provides the Council with the power to make by-laws that govern matters of concern to the people of the Wreck Bay Community, such as: cultural activities; management, access, development and use of Aboriginal land; declaration of sacred or significant sites; control of visitors; and hunting, shooting and fishing on Aboriginal land. Subsection 52A(10) requires that the Council provide the Minister administering the Land Grant Act with a copy of any by-law that it has made within 7 days of making it. The Minister is to then gazette and table the by-laws. The 7 day period has proved difficult to work with, especially over public holiday periods. The proposed amendments will extend this period to 21 days, which the Council views as a more realistic timeframe in which to comply with this requirement. It will apply to any by-law that has been made after the commencement of the Schedule to this bill or that was made within a period of 7 days prior to commencement.

The bill also amends provisions relating to the position of Registrar of the Council. At present the Registrar is to be an officer within the Aboriginal and Torres Strait Islander Commission (ATSIC). As the Government has recently established Aboriginal and Torres Strait Islander Services, the Act will be amended to enable the Minister to appoint an APS employee within a portfolio Agency or an officer within ATSIC as the Registrar.

This bill reflects the on-going commitment by this Government to assist in achieving positive outcomes in respect of the Land Grant Act. There are no financial implications arising from this bill.

Debate (on motion by Senator Ludwig) adjourned.
Ordered that the bills be listed on the Notice Paper as separate orders of the day.

FISHERIES LEGISLATION AMENDMENT (HIGH SEAS FISHING ACTIVITIES AND OTHER MATTERS) BILL 2003

First Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.05 a.m.)—I move:

That the following bill be introduced: a Bill for an Act to amend legislation about fisheries, and for related purposes.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.05 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.05 a.m.)—I move:

That this bill be now read a second time.

I table an explanatory memorandum to the bill and seek leave to have the second reading speech incorporated in Hansard.

Leave granted.

The speech read as follows—

FISHERIES LEGISLATION AMENDMENT (HIGH SEAS FISHING ACTIVITIES AND OTHER MATTERS) BILL 2003

The Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2003 will make a number of important amendments to the Fisheries Management Act 1991 and the Fisheries Administration Act 1991, and is comprised of two major elements.

• the first contains the necessary amendments to enable Australia to give legal effect to our domestic obligations under the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of the Food and Agriculture Organization of the United Nations; and

• secondly, the bill contains a number of miscellaneous amendments to improve the operating efficiency and effectiveness of the Australian Fisheries Management Authority (AFMA) in undertaking its management of the Commonwealth fisheries resources.

This bill, which is the first part of a package of fisheries amendments that is currently being developed by the Government, will give effect to Australia’s international fisheries obligations and improve on the general management of Australia’s living marine resources.

Schedule 1—The FAO Compliance Agreement

As already mentioned, Schedule 1 of the bill contains the necessary amendments to the Fisheries Management Act 1991 and Fisheries Administration Act 1991 to enable Australia to give legal effect to its obligations established under the FAO Compliance Agreement.

The Compliance Agreement is a major component in the framework of internationally agreed measures for the conservation and management of fisheries. It is consistent with the United Nations Convention on the Law of the Sea and forms a central element of the FAO Code of Conduct for Responsible Fisheries, which sets out the principles and standards of behaviour for responsible fishing.

The Compliance Agreement was developed as part of the international response to the increasing levels of illegal, unreported and unregulated (IUU) fishing on the high seas. In particular, it aims to combat the practice of vessels avoiding compliance with international fisheries management measures by “re-flagging” to countries unable or unwilling to comply with those measures.

It also encourages improved international cooperation and compliance by requiring flag States to implement appropriate systems for the authorisation and recording of high seas fishing vessels,
whilst also requiring them to share information collected on the activities of those vessels on the high seas.

The Australian Government and the commercial fishing industry has a strong interest in supporting such international measures. The recent pursuit and arrest of the Uruguayan flagged vessel Viarsa, has highlighted the need for countries to work together to combat the illegal operators that put their own personal gain ahead of the future of our valuable marine resources.

The Government remains strongly committed to regional and international efforts to regulate fishing activities to ensure the future sustainability of global fish stocks whilst, at the same time, expanding and protecting Australia’s national interests on the high seas. We are determined to maintain our strong and uncompromising stance in the fight against such destructive and unsustainable fishing practices.

The Joint Standing Committee on Treaties considered the Compliance Agreement in mid 2003 and recommended that Australia accept it. However, Australia cannot formally deposit its Instrument of Acceptance with the FAO until the Compliance Agreement has been fully enacted in Australian law.

Whilst Australia already abides by the essential obligations contained within the Compliance Agreement, suitable amendments to our domestic law are required to provide for additional statutory functions and objectives for AFMA. The amendments set out in Schedule 1 will specifically provide for:

- the creation of additional statutory functions and objectives for AFMA to enable the Authority to ensure that fishing by Australian-flagged boats on the high sea is conducted in a manner that is consistent with Australia’s international obligations. These new functions will also ensure that AFMA is able to give effect to the information exchange obligations established under the Compliance Agreement;
- a requirement for AFMA to authorise Australian-flagged boats to fish on the high seas only where it is satisfied that to do so would be consistent with Australia’s obligations under international agreements;
- a power for AFMA to make suitable background checks on any boats applying for a high-seas authorisation and, where appropriate, to refuse a boat nomination. This amendment will also expand on AFMA’s existing discretionary powers with regard to the nomination of vessels to permits within the Australian fishing zone;
- an extension in the powers of AFMA to cancel a boat’s authorisation to fish on the high seas if the vessel ceases to be entitled to fly the Australian flag; and
- the establishment and maintenance of a register of all Australian-flagged vessels authorised to fish on the high seas, including appropriate penalty clauses for any party found to be falsifying information provided to the register or purported to have been generated from the register.

Passage of the amendments in this bill will allow Australia to join with the other responsible nations who have already ratified the Compliance Agreement.

Australia’s acceptance of the Compliance Agreement will help demonstrate to other countries, particularly to those not yet a party to the Compliance Agreement, that we are serious about our efforts to combat IUU fishing. It will also have the benefit of helping protect the Australian fishing industry and the communities that are dependent upon this important natural resource for their economic wellbeing. The industry, in 2001-2002, was worth approximately $2.41 billion per annum to the Australian economy.

Schedule 2—AFMA’s Operating Efficiency

The second schedule of the bill contains a number of miscellaneous amendments to the Fisheries Management Act 1991 that will improve AFMA’s overall ability to deliver and enforce effective fisheries management in Commonwealth fisheries.

These amendments cover a diverse range of subjects and are a result of the continuing refinement of fisheries management practices that has occurred since the initial introduction of the legislation in 1991.
The amendments have been prepared in full consultation with industry through AFMA’s well-established management advisory committee process, with the proposed amendments being considered and approved by the AFMA Board in February 2002.

I will now briefly outline the purpose of each of the amendments.

The first amendment in Schedule 2 will provide AFMA with a power to determine logbooks for the Commonwealth-managed fisheries. Until recently, this power was provided to AFMA through a delegation from the Governor General. However, in late 2001 the Tasmanian Supreme Court found that this system was invalid on the basis that it was contrary to the power granted by Parliament.

Since this decision, AFMA has continued its logbook program through the use of conditions on fishing concessions, a course which was approved by the Supreme Court. However, as the completion of logbooks is central to effective fisheries management, a more formalised structure is needed. This amendment will provide AFMA with the capacity, through written determination, to ensure that holders of fishing concessions keep and maintain appropriate logbooks.

The next amendment, and one that has been given serious consideration by the Government, will provide officers operating under the Fisheries Management Act 1991, with a limited power to stop and detain vehicles and aircraft without a warrant or the consent of the owner.

Currently, under section 84(1)(e) of the Fisheries Management Act 1991, officers have the power to stop and detain vehicles and aircraft without a warrant or with the consent of the owner. However, where there is reason to suspect that a vehicle may be carrying fish, which is not correctly documented, there is not always time to get a warrant and, if the suspicion has foundation, consent may not be forthcoming.

To overcome these difficulties and to ensure that there are minimal leakages from AFMA’s system of catch accountability, the bill will amend the Fisheries Management Act 1991 to enable officers to exercise those powers in the absence of consent or an appropriate warrant.

To ensure that the amended power remains consistent with the Government’s overall approach to stop and detain powers, the amendments will also impose a number of important safeguards.

Firstly, the use of this power will be strictly limited to those situations where consent is not forthcoming AND the officer has reasonable grounds to believe that a vehicle or aircraft contains evidence of an offence under the Fisheries Management Act 1991. Even then, this power can only be exercised in those situations where the time taken to obtain a written, telephone or electronic warrant would frustrate the effective execution of the warrant.

In using such a power, an officer is obliged to notify the owner or person in charge of a vehicle or aircraft (if practical) that they will be conducting a search without a warrant and the reasons for doing so. Added to this, the officer must, as soon as practical, record the reasons for exercising the powers without a warrant and, if requested, provide these reasons to the person affected by the exercise of the powers.

The third amendment will give charter fishing a similar but separate status under the Fisheries Management Act 1991 as recreational fishing. This was an outcome of the recent “Looking to the Future” review of Commonwealth Fisheries Policy.

Charter fishing sits somewhere between commercial fishing and recreational fishing, being a commercial activity that provides a platform and local knowledge for recreational fishing but does not involve the take of fish for sale.

At present, the Act provides that a charter boat and the person in charge of a charter boat are engaged in commercial fishing. This is in direct contrast to the Australian and State Governments’ in-principle agreed policy on the management of recreational and charter fishing, which sees the day-to-day management of such fishing delegated to the States and Territories.

Given the current definition of “charter boat”, it is unlikely that charter fishing could be effectively managed without de facto management of recreational fishing. Accordingly, the bill will amend the Act to give charter fishing a similar but separate status to that applying to recreational fishing.
Lastly, an amendment will be made to the Fisheries Management Act 1991 to allow Australia to more effectively implement any amendments made to the Treaty on Fisheries between the Governments of certain Pacific Islands and the Government of the United States, more commonly known as the US Treaty.

Under this Treaty, US tuna vessels are licensed to fish in the Exclusive Economic Zones of the member nations of the South Pacific Forum Fisheries Agency. In Australia, US Treaty licensed purse seine fishing may be conducted in the north-eastern part of the Australian EEZ well off the Queensland coast.

At present, any amendment made to the Treaty (which is included as Schedule 1 to the Fisheries Management Act 1991) has no effect on Australian domestic law until it is declared by Regulations to have effect. This can often be a time consuming process and, if the amendment has no effect on Australia, is a relatively inefficient use of the Government’s resources.

The bill will amend the Act to ensure that any amendments to the US Treaty, which do not affect Australia, can proceed without Parliamentary involvement. However, those amendments to the Treaty that have the capacity to impact on Australia will continue to be promulgated by Regulation.

Such an amendment will ensure that the Australian Government does not waste valuable time and resources preparing regulations that will not have a direct impact on our country’s interests.

In summary, I consider that the initiatives contained in this bill build on the Government’s commitment to delivering efficient, cost-effective and most importantly sustainable fisheries management both now and the future.

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

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**SPAM BILL 2003**

**SPAM (CONSEQUENTIAL AMENDMENTS) BILL 2003**

**In Committee**

Consideration resumed from 27 November.

**SPAM (CONSEQUENTIAL AMENDMENTS) BILL 2003**

Bill—by leave—taken as a whole.

**Senator LUNDY** (Australian Capital Territory) *(9.07 a.m.*)—by leave—I move opposition amendments (5), (6) and (7) on sheet 3164:

(5) Schedule 1, item 71, page 25 (line 19), omit “been involved in”, substitute “committed”.

(6) Schedule 1, item 71, page 25 (line 31), after “person”, insert “deliberately and without reasonable excuse”.

(7) Schedule 1, item 71, page 25 (line 31), at the end of paragraph 547J(4)(b), add “within their power or knowledge”.

The proposed new section 547J of the Telecommunications Act allows a magistrate to give an order requiring any individual reasonably suspected of having been involved in a breach of the Spam Act to disclose decryption keys and access codes to computers which may be felt to contain evidence about the breach. While we have some concerns about the coercive nature of this proposed section, Labor’s immediate concern is that failure to comply with such a request would result in six months imprisonment. It seems that this measure has been lifted lock, stock and barrel out of the Cybercrime Act, but it sticks out in this legislation as a disproportionate penalty in a bill that otherwise uses civil penalties.

This criminal penalty is exacerbated by the class of people who can be made subject to it and by the strict liability test employed by this provision. Orders can be made to people who are suspected not of committing
a breach but merely of being involved in a breach. That is why we think the issue has been exacerbated, because it goes beyond people who are suspects and people who may be involved in a breach and it is reasonable to interpret that as people who may be inadvertently involved in a breach. Furthermore, there is no consideration afforded to the fact that a person may not know, may have forgotten or may otherwise genuinely be unable to access a computer. We note the disproportionate nature of this punishment in the context of the entire regime, as I said. We believe that, if this penalty is to be put in place, the wording of section 547J should be tightened up to prevent its misuse or abuse in the case, for example, of people being unreasonably intimidated to provide access codes. As I mentioned, if somebody genuinely does not know how to access a computer, they would not become, under a strict liability test, guilty of an offence that could attract six months imprisonment.

Amendment (5) narrows the class of people who may be compelled to provide access to a computer from those reasonably suspected of having been involved in a breach of the Spam Act to those reasonably suspected of having committed a breach of the Spam Act. It is entirely appropriate that actual suspects become the focus of this section, not people merely thought of as being involved in a breach of the act. Amendments (6) and (7) amend the proposed paragraph 547J(4)(b) to ease the strict liability currently imposed by this section. While requiring compliance with the order, the new paragraph limits liability to those people who deliberately and without reasonable excuse omit to perform an act within their power and knowledge. These amendments mean that, if people genuinely cannot remember, they are not going to be subject to a strict liability penalty that is drawn directly from the Cybercrime Act. Quite sensibly, this means that no-one can be imprisoned for inadvertently not obeying the court order or for failing to do something that is not in their power to perform.

Moving on to more general comments, the main point here is that these penalties—whilst I understand that they have been drawn from the Cybercrime Act and it has been a pattern of the government in the drafting of this legislation to rely on many pre-existing clauses in other acts, like the Telecommunications Act and the Cybercrime Act—do not actually fit the regime. They are not a good fit. The government itself has said this act is about changing behaviours. It is about targeting those who make money out of spam. It is not about targeting those people who are not spamming but, in the scenario where an individual is inspected in their own home or suspected of spamming, this clause looks way out of proportion to what needs to be done. These amendments certainly remove any of the unreasonable, disproportionate penalties.

If the government were looking at this through a corporate or business scenario, you could start to see why it has been an easy short cut for them to borrow the definitions from the Cybercrime Act. In some scenarios, how the act is currently worded perhaps would seem to fit but, consistent with our previous amendments, the scenario that Labor have in mind is making sure that there is not undue invasion of privacy, or indeed unreasonable impact on individuals, through an extraordinary array of powers that the Australian Communications Authority inspectors have been given.

Labor believe that this amendment further refines this regime, makes it more credible and more workable and adds to the strength of operation of this bill. It is a constructive amendment, and it sits comfortably with the principles we have articulated relating to our
previous amendments, where we want to clarify and tighten up the role and the powers of the ACA inspectors to enforce the spam legislation. To pass this amendment—and I urge the government to consider that—will just remove what I think sticks out as quite an anomaly in the application of penalties.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.13 a.m.)—The government has some problems with these amendments. Let me start with amendment (5). As with other Labor and Democrat amendments to be moved in relation to access provisions, the government does not support this amendment for the reason that it makes no substantive change to the current provisions and is technically flawed in its phrasing. Let me explain that. Currently the bill, as drafted, enables a magistrate to require a person reasonably suspected of having been involved in a breach of the Spam Bill to assist in accessing data, where they have the relevant knowledge to do so. The Labor amendment—and I am obviously speaking just to Senator Greig here—attempts to restrict who is subject to an access order to only those persons reasonably suspected of having committed a breach. In terms of coverage of the provision, it makes little difference if one talks of a person who has ‘committed’ a breach or has ‘been involved in’ a breach. This is because persons involved in a breach may include those described in the subsections of the bill describing ancillary contraventions, which cover such activities as aiding and abetting breaches of the Spam Bill. In addition, the amendment has technical flaws, as contraventions of civil penalties are not described as a committed breach. For these reasons, we do not support amendment (5) proposed by the Labor Party.

Turning now to opposition amendment (6), the government does not support this amendment or the similar amendment (7) to be proposed by the Democrats, as their effect is already provided for in the bill. The proposed section 547J provides that where a person breaches a court order to provide information or assistance in accessing a computer or data, that person may be subject to a penalty of up to six months. The amendments proposed are not necessary, by virtue of the application of the Criminal Code, as the offence only applies if a person intentionally omits to do an act. An innocent mistake or a lack of ability to comply with the order is unlikely to be subject to a penalty, as a prosecution of the offence would need to prove that the person intentionally omitted to do something which breached the order. Labor has proposed, in amendment (6), that the offence only apply where a person deliberately omitted to do something. The Democrats propose a similar amendment: that a person must knowingly omit something. I am sure that, once senators understand that the offence provision is already limited to intentional omissions—and this is the assurance that I have received from my advisers; this is not a Senator Kemp invention here, Senator Lundy—they will recognise that their amendments are not necessary and, hopefully, will withdraw them, so we can proceed at full speed.

Let me now turn to amendment (7) proposed by Senator Lundy. The government notes that the intent of this amendment is similar to the intent of the soon-to-be-discussed Democrats amendment (6). As previously discussed, the government does not support this amendment as its effect is already provided for in the bill. To sum up, opposition amendment (7) is already provided for in the bill and is not necessary. Opposition amendment (6) is not necessary. It is already covered in the bill. Opposition amendment (5) is technically flawed and does not make any substantive change. So, we will not be supporting those amendments.
I hope that perhaps, when this bill comes back, these things can be dealt with in a way which avoids these debates, which I do not think are necessary.

Senator LUNDY (Australian Capital Territory) (9.19 a.m.)—I thank the minister for that explanation. Minister, you say that opposition amendments (6) and (7) are not necessary. If that is the case then why not expressly state that in the bill? Why not allow these amendments to pass because they clarify the bill? If these are the provisions of another piece of legislation, you might know that but, for the people who are out there enforcing the laws or perhaps are subject to the laws, it makes perfect sense to me to add clarity to this bill by including these amendments in the legislation.

In relation to amendment (5) and this issue about being reasonably involved and how far that will reach—as opposed to what we are arguing, which is that someone has to actually be suspected—again, when we are dealing with the Internet, as I am sure the minister is aware, it is about not just the Internet or email per se but the computer equipment. To suggest that someone is reasonably involved—how far does that go once you are dealing in a virtual and digital environment? Does that mean that someone who was also, perhaps, on the spammer’s list is involved in a breach of the proposed Spam Act? That raises the question about the recipient that many of our previous amendments addressed. Is a recipient suspected of having been involved in a breach of the Spam Act? They are involved in it because they have been spammed. It is very unclear what ‘been involved in’—which is the wording—actually extends to. Rather than a technical flaw, we are asking, again, for a sharper focus and greater clarity.

However, the minister has made it clear that the government do not intend to support these amendments. That is consistent with their approach to all of the Labor and Democrat amendments that have been presented through both this and the previous bill. That is unfortunate. Our amendments seek to improve this legislation—that is their intention. It is very clear from witnesses and submitters to the inquiry that there is a very strong view that this bill is in need of refinement.

I should just say that our amendment (6) conflicts with Democrat amendment (7). If this amendment passes, it might mean that Democrat amendment (7) has no place to go. We would argue, anyway—we know that the Democrats are trying to do a couple of things with their remaining amendments—that we think our amendments manage in a better and more effective way. I just want to signal that the passage of these Labor amendments will override Democrat amendment (7).

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.22 a.m.)—Senator Lundy, that assumes that Senator Greig will vote for your amendment to toss out his amendment. I can assure Senator Greig that we will not be supporting the Labor amendment, so for this brief period of time he may see himself as having the numbers. It is an interesting test for you, Senator Greig. What are you going to do? I thought that Senator Lundy was slightly presumptuous to say that, as a result, your amendment will fall over. Your amendment will fall over, but it need not fall over now, Senator. Let me assure you that, if you join with the coalition, we will toss out this amendment from Senator Lundy.

Senator Lundy, I have to query a number of things you said. First of all, I am not sure that people are calling for these refinements. In fact, my information is quite the reverse: people are desperate to get this bill through. This bill strikes a reasonable balance. I know that the ACTU calls for refinements, but that
is like me standing up and arguing that the Victorian division of the Liberal Party wants me to do something. So what? So what if the ACTU wants you to do something? That is part of the Labor Party body corporate. It does not wash with me, and it does not wash in this chamber.

The problem is that in your response to me, Senator Lundy, you did not deal with the technical flaws in your amendment. I raised the issue of some technical flaws. For example, I said that your amendment had a technical flaw in the sense that contraventions with civil penalties are not described as a committed breach. So, although the intent is covered in the bill, the amendment, again, has a technical flaw. I reject your view that there is widespread demand for this. No information has been given to me by my advisers to suggest that there is any widespread demand for this. We will not be supporting it. Senator Greig, we look forward to your support for the government's position on this so that we can throw out this Labor amendment.

Senator GREIG (Western Australia) (9.25 a.m.)—Minister, you raise an interesting point in terms of the way in which we progress the amendments before us today. I guess the broader question is: if I were to oppose Labor's amendment and, as a consequence, have the opportunity to propose the better Democrat amendment, would the government accept that? I understand that it would not. While that amendment may succeed in this place, it will, clearly, be removed in the other place. As I understand it, Labor will not insist on any of the amendments when the bill returns—if I am mistaken, Senator Lundy can correct me—and, in that case, the entire debate is moot. However, on the basis that we believe that our amendment (7) is a little stronger in terms of what Labor is trying to achieve—particularly around the notion of what one is knowingly omitting to do on an act—I ask, Chair, that we separate opposition amendment (6) from opposition amendments (5) and (7), and put opposition amendments (5) and (7) first, followed by opposition amendment (6).

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.26 a.m.)—From the point of view of the government, of course we will be very happy to oblige. As Senator Greig knows, I always try to assist senators. But, Senator Greig, I do not want to unduly raise your expectations on this matter. I have noted before that I have difficulties understanding the Democrats' logic on this bill. They are opposed to exemptions, yet they support widening the exemptions. They are in favour of simplicity but keep on making the bill more and more complex. This is another test. We are opposed to the amendment moved by Senator Lundy and we think that it should be thrown out. Senator Greig, this will be a chance for you to act in a way that I would describe as logical; in other words, this is a chance for you to join with the government to throw this amendment out. But, Senator Greig, I do not want you to be under any illusions: we will be opposing your amendment, too.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that opposition amendments (5) and (7) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that opposition amendment (6) be agreed to.

Question negatived.

Senator GREIG (Western Australia) (9.28 a.m.)—I move Democrat amendment (6) on sheet 3206:

(6) Schedule 1, item 71, page 25 (after line 30), after paragraph 547J(4)(a), insert:

(aa) the person is able to comply with the order; and
This goes to the heart of what was recommendation 5 in our minority report: in essence, that the bill be amended to ensure that inability to provide information or assistance is not grounds for being charged with an offence and that this provision is only applied to those deliberately obstructive in the provision of reasonable access. The recommendation relates to the concern we have—certainly, with the bill as it currently stands—that, if a person fails to provide a password to a particular machine or network, they can be charged with an offence. That applies even if they have legitimately forgotten the password or did not know it in the first place. For example, it is unlikely that an employee of the owner would know the network access password. Regardless, they can be charged with an offence and, possibly, imprisoned for six months. We believe that this should be amended. Deliberate obstruction is one matter; unrealistic expectations that people have access to systems security measures are quite another.

In its current form we believe the bill establishes as an offence a failure to provide information or assistance that is reasonable or necessary. A number of submissions to the inquiry into the bill were concerned that these provisions may extend to a failure to provide a password or encryption key. The Democrats share those concerns and we do not support the provision, particularly as it applies not only to owners but also to occupiers. We maintain that, due to the nature and variety of information stored on computers today, strong security is very much the norm, or it should be. Few company employees—or, in the instance of a private dwelling, few housemates—could be expected to know the full details of password encryption and privacy systems for machines that they do not own. Few people, for example, would know that there are separate passwords for the BIOS, the administrator account and possibly for each individual user. Each of these permissions can be prescriptive, limited in their nature and allowing certain users access to some areas but not others. The bill as it currently stands assumes that any computer operator, or flatmate for that matter, would have access to these pieces of information and therefore the capacity to bypass security and encryption devices. This was a concern that was shared by Electronic Frontiers, which submitted to the hearing. Their submission stated:

The problem with the provisions is that they pay no attention to the fact that a person may have legitimately lost an encryption key and may be unable to provide the sought assistance. The penalties do not give a person any way to prove it. You have the situation where if a person has forgotten a password they can be thrown in jail, in theory, for six months.

Clearly that is something that we find unacceptable. So Democrat amendment (6), and flowing from that in a moment Democrat amendment (7), aim to amend the wording of section 71 of the schedule to ensure that failure to provide security information does not give rise to that offence. It amends section 547J(4) of the Telecommunications Act 1999 by adding an extra subsection (aa) to specify that a person in question must be able—‘able’ being the operative word there—to comply with the order.

Senator LUNDY (Australian Capital Territory) (9.32 a.m.)—In considering this Democrat amendment, Labor believe that we have effectively covered off this issue in our previous amendments, opposition amendments (5) and (7), which have passed, so we will not be supporting it.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.32 a.m.)—We also will not be supporting this amendment.

Question negatived.
Senator GREIG (Western Australia) (9.33 a.m.)—I move Democrat amendment (7):

(7) Schedule 1, item 71, page 25 (line 31), after “person”, insert “knowingly”.

This goes to the heart of trying to implement recommendation 5 from our minority report, that the bill be amended to ensure that inability to provide information or assistance is not grounds for an offence and that this provision is only applied to those deliberately obstructing the provision of reasonable access. The amendment goes together with the previous amendment, amendment (6), which was not passed, to complete the implementation of that recommendation. Essentially the effect of those amendments collectively would have ensured that only those persons who wilfully—again, ‘wilfully’ being the key word there—seek to obstruct an investigation may be charged with an offence. Only if a person knows the information sought, is able to provide it and refuses to do so can they reasonably be considered to be obstructing the investigation. It is unreasonable to expect those who are unable to provide certain information to do so and then, if they cannot, to charge them with that offence. So these amendments are relatively minor but I believe effective. They change the tone of this particular section and ensure that innocent people who do not have access to passwords or encryption keys are protected.

Senator LUNDY (Australian Capital Territory) (9.34 a.m.)—I should say that we will be supporting this, but on the basis that the Democrats did not support our amendment (6), which is very close to this Democrat amendment. Given that the Democrats sided with the government to knock off our amendment (6), which is very similar to this, although we believed ours was stronger, we will in fact support this. We think that adding that word ‘knowingly’ gives the clarity to this bill that the minister says is there any-way in invoking the provisions it does in this section. Again we are strengthening and adding clarity to the bill with a very constructive amendment. We would have preferred to see ours but we are happy to support Democrat amendment (7).

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.35 a.m.)—I am reminded of the words of the old song, ‘You can’t have one without the other.’ I think you probably can have (7) without (6), but it does seem a bit odd, I have to say. We will not be supporting it. I think we have discussed these arguments at length in relation to the previous motion moved by Senator Lundy and I think it is fair to say that those general arguments apply to this. We will not be supporting this amendment.

Question agreed to.

Senator GREIG (Western Australia) (9.36 a.m.)—by leave—I move Democrat amendments (8) and (9):

(8) Schedule 1, item 72, page 26 (line 23), omit “questions put”, substitute “questions that are relevant to the investigation put”.

(9) Schedule 1, item 72, page 26 (line 24), omit “documents requested”, substitute “documents that are relevant to the investigation requested”.

These final Democrat amendments go to the heart of recommendation 4 from our minority report, namely, that the bill be amended to require that search and seizure warrants expressly indicate what items or types of files may be searched or seized. The amendments complement and work in relation with Democrat amendments (1) and (3), which we have previously dealt with. These amendments, like our attempt to have warrants specify exactly what investigators are looking for, are primarily targeted towards preventing what we might describe as fishing expeditions.
As it currently stands, the bill adds a new subsection (1)(a) to section 549 of the Telecommunications Act 1997 and it requires that a person under investigation answer any questions or produce any documents requested by the investigator. Our amendments will ensure that inspectors may only ask questions or request documents that are relevant to the investigation, and this is important. The powers of the investigator are too broad and they need to be tightened to protect the rights of those under investigation. Amendments (8) and (9) insert the relevant words into clause 72 of schedule 1 to ensure that only those questions or documents that are specifically relevant to the investigation can be put or requested.

Senator LUNDY (Australian Capital Territory) (9.38 a.m.)—It is Labor’s view that these final two amendments of the Democrats, (8) and (9), would achieve their aim of tightening up the circumstances and orders requiring people to talk to the ACA investigators and to provide documents. The effect would be to limit these orders to apply to issues relevant to the spam investigation and not just anything. As I have said, the current wording of the bill is very broad, and it is not acceptable to have quite extraordinary new powers without relating them back to the investigation. Whilst these amendments are quite separate from other issues we have discussed, we think they are consistent with the concerns that Labor has expressed and reflected in amendments to this bill, almost all of which have been successful. Therefore, we will be supporting these amendments of the Democrats. We want to make sure that in spam investigations and the ability to obtain documents remains directly related to the investigation at hand.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.39 a.m.)—I think these are the last amendments and we will not be supporting them because, as with numerous other amendments moved by the Democrats and the Labor Party, they are simply unnecessary. The effect of these amendments of the Democrats is already provided for in the bill. I have the clause of the bill here. I do not claim to be a lawyer, but a reasonable person reading the bill would suggest that the fears expressed by Senator Lundy and Senator Greig are not justified.

Let me be specific: the amendments relate to an inspector’s power to require information or documents when they are conducting spam related research. Proposed section 549(1)(a) as currently drafted only enables an inspector to require a person to answer questions or produce documents to the extent reasonably necessary for the purpose of ascertaining whether the Spam Bill has been complied with. If you read that proposed section, Senator Greig, I regret to say that I do think you have not been well advised on this matter. Senator Greig’s amendments support to limit the questions and documents to those related to the investigation. As I have already said, this is already provided for. So we will not be supporting this set of amendments.

This is probably the last series of amendments, and I would like to make some brief comments on the bill. I think we are all in blazing agreement that this bill is necessary and we are all in agreement that this bill has taken a long time to be brought to this stage. This bill is not one on which there are ideological divides between the parties; it is simply a matter of dealing with a complex and difficult issue in a practical manner. My feeling is that the Senate can work out how it wants to spend its time and, equally, senators can decide how they want to spend their time. I make no particular judgment on that; people’s priorities differ—

Senator Mackay interjecting—
Senator Kemp—And, Senator Mackay, people can make their judgments as to whom they want as leader in their party. You just keep quiet. You have not been in this debate; you have just wandered in. I am just making a couple of comments. So you just get back to worrying about Simon and we will deal with this bill, if that will suit you.

Senator Lundy—It is your time.

Senator Mackay—Stop wasting time and just get on with it.

Senator Kemp—Senator Mackay, you have made no contribution to the debate. You are upset and concerned because of the ructions in the Labor Party, so do not come into this chamber and vent your spleen.

Senator Mackay—Just get on with it.

Senator Kemp—I will, if you will kindly keep quiet.

Senator Mackay—Get on with it then.

Senator Kemp—Are you finished?

Senator Mackay—Have you?

Senator Kemp—No, I have not.

Senator Mackay—Sit down if you have.

The Temporary Chairman (Senator Sandy Macdonald)—Order!

Senator Kemp—Mr Temporary Chairman, I would have thought it a little bit early for someone to be showing the effects of partying last night. But the point I am making—

Senator Mackay interjecting—

The Temporary Chairman—Order! Minister, just proceed with your comments.

Senator Kemp—Senator Mackay is upset because of what is happening in the Labor Party and what is happening to Simon Crean, so she comes in and starts shouting in this chamber and behaving in a silly and irrational fashion.

Senator Lundy—Mr Temporary Chairman, on a point of order related to relevance: what a bizarre departure from the business at hand. We are working to the government’s program. We are cooperating with the government by sitting on a Friday to get its legislation through. We have just had an extraordinary example of how the government wants to waste everybody’s time. I ask you to call him to order on the point of relevance.

The Temporary Chairman—I thank Senator Lundy for her contribution, but there is no point of order.

Senator Mackay—Mr Temporary Chairman, on the point of order: I feel aggrieved by the comments that the minister has made, particularly the comments about my activities last night when I was working.

The Temporary Chairman—What is your point of order?

Senator Mackay—My point is that I would like that withdrawn. Secondly, I indicate to the chamber that the minister ought to be relevant. I was aware of his pathetic performance last night—blowing out the government’s time—and I ask him to get on with it so that we can proceed with the program.

The Temporary Chairman—Thank you for your contribution too, Senator Mackay, but there is no point of order. I ask the minister to keep his mind and comments on the amendments being considered.

Senator Kemp—The point I was making is that this bill has travelled a long way. It is a pity that we have had a wide range of amendments that on one level are flawed and on another level raise issues that have already been dealt with in the bill. I think there is a better way to deal with these types of issues, to be quite frank. The way to deal with them is not to produce amendments of a highly technical nature to a bill on the morning the bill is to be presented. We have the problem that we have had a long debate and
these amendments will inevitably fall over in the end. As far as I am aware, they do not have any widespread community support. From my point of view, this bill could have been better dealt with. In the end it is up to the Senate to do what it wishes, but I do not think this has been a great debate. Issues that the government has raised have never been properly addressed in this chamber, as far as I can see. I made point after point which was not responded to. So the bill in its current form is not one the government finds acceptable.

The TEMPORARY CHAIRMAN—The question is that Democrat amendments (8) and (9) be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Third Reading

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.47 a.m.)—I move:

That these bills be now read a third time.

Senator GREIG (Western Australia) (9.47 a.m.)—Before this debate on the spam bills is finalised I would like to make a few closing comments, particularly on the debate on the bills that began on Tuesday and with specific reference to erroneous statements made by Senator Lundy in response to the first Democrat amendments. Those statements, backed wholeheartedly by the Minister for the Arts and Sport, signalled the beginning of a debate that was fraught with inconsistencies—not on my part, as alleged, but on the part of both the government and the opposition. The first Democrat amendment, as I said at the time, was designed to ensure the bill dealt with unsolicited emails of any nature; hence the broadening of the definition of ‘commercial electronic message’ to include any message sent to a large number of electronic addresses. I agree with the minister that the inclusion of non-commercial electronic messages in the definition of commercial electronic messages is far from ideal but, short of rewriting what I believe is a clumsily constructed bill that is full of inconsistencies, there was no other way to achieve such an aim. At least in the process the bill would have covered what Senator Lundy argued was the general community understanding of spam.

In response to that amendment, Senator Lundy offered a range of examples that she was concerned would be unintentionally caught up in the bill as a consequence of my amendment. I believe that each of those examples was wrong and I would like to place that belief on the record. The first example related to the school student who Senator Lundy was concerned would be prevented from sending an email to all members of parliament or to their local community. That is simply not the case. First and foremost, educational institutions remain in the bill as senders of designated commercial electronic messages provided they also include functional unsubscribe mechanisms. Senator Lundy went on to say—irrelevant as it was, given the email in question would never be considered spam—that this particular example would require some sort of ‘subjective assessment of whether or not their motivation is correct’.

Senator Lundy went on to say:

… that adds a layer of ambiguity to this legislation, which, in its first incarnation, quite frankly it can do without.

I agree entirely with Senator Lundy’s assessment that much of the bill is ambiguous. The only point about which I am confused is how Senator Lundy can argue it is problematic that the sender’s motivation be assessed in this particular instance, yet the Labor Party can then join with the Democrats to
introduce an amendment that would do exactly that. In certain circumstances an email would not be regarded as spam if the sender could demonstrate a bona fide belief that the recipient would have a genuine interest in the email being sent, thus requiring an assessment of the sender’s motivation. How can it be any more ambiguous to apply this test to a non-commercial email than to a commercial one? Senator Lundy argues that, for the purposes of sending commercial messages, it would not be possible to meet this test for emails sent in an indiscriminate manner. I agree. Senator Lundy believes that such a test would separate well-meaning users from those the bill is seeking to target. Again, I agree. But I challenge Senator Lundy to explain why such a test could not equally be applied to non-commercial emails.

The next set of examples Senator Lundy raised highlights this very issue—for example, a job seeker sending out a CV to a dozen workplaces, a constituent emailing every politician or a worker sending out a farewell message to all their staff at work. None of these examples could be said to be either indiscriminate or anything other than well meaning, with the possible exception of an email to a politician. Further, in the first example of a job seeker sending out a CV, the message would be a designated electronic message containing both factual information and enough details for the recipient to ‘unsubscribe’. A constituent emailing a politician would not be considered spam because every politician’s email address is conspicuously published and, therefore, consent is taken to have been provided.

In the final example, a farewell message emailed to colleagues from a worker would not be considered spam because there is both the capacity to demonstrate a previous relationship and a genuine belief that the recipient would be interested in the message. Senator Kemp rejected the Democrat and ALP amendment requiring the sender to have a bona fide belief, on the basis that it waters down the bill. The Democrats introduced this amendment as a fail-safe. Had the bill been significantly expanded to prohibit spam from non-commercial sources and had it removed exemptions for charitable, religious and political organisations, as we had wished, then this provision would have ensured that bona fide emails from any of those sources could not be regarded as spam. Rather than representing a watering down of the bill, these combined measures would have in fact made the bill more effective.

Senator Lundy went on to say that, while no-one could argue with the Democrats’ position that everyone wants to do away with spam, although both the minister and she did, Senator Lundy believed the bill was best targeted at those profiting from the activity. As I mentioned earlier in the debate, this misses the point altogether. While it is important to target those profiting from spam, and we do this by (a) making spam illegal and (b) imposing penalties to make breaches undesirable, these measures do not solve the largest part of the problem—that is, the cost to the receiver. When such measures are limited to only some of those who are spamming, limiting the bill to commercial spammers—those profiting from their spamming activities—does absolutely nothing to reduce the cost of non-commercial spam.

Senator Lundy believes that an education campaign is the solution to non-commercial spammers. I want to know the answers to questions arising from that. Who is going to conduct the campaign? Who will fund it? Where is the provision for it? Senator Lundy asked some questions in that area and she rightly discussed ALP amendments within the context of ensuring consistency and best practice. But where is consistency and best practice applied here? Why do we apply con-
sistency to commercial spammers but not to non-commercial spammers? It does not make sense to me. I agree certainly with Senator Lundy’s view that non-commercial users must realise the need to abide by the principles of permission based approaches and the need to gain the consent of or establish a relationship with the person to whom they are sending the email. How will we ensure that serial non-commercial spammers who fail to realise or abide by such principles are held accountable? I do not think a brochure would be much deterrent.

The Democrats’ first amendment would have, in combination with the others that followed it, provided a consistent, effective and evenly applied range of measures that would target and reduce spam as we have come to commonly understand it. It would have required all email senders, with the exception of educational institutions, to (a) obtain consent or (b) be able to at least demonstrate a bone fide belief that the receiver would have a genuine interest in the content of the message, and it would have required all senders, including educational facilities, to (c) provide a functional opt-out clause. Those measures would have gone some way to resolving the problem. Instead, I am disappointed to say that what we have ended up with is a bill that is now so full of holes that it will effectively cover very few emails at all and will do next to nothing to reduce the cost or annoyance created by spam emails.

Senator LUNDY (Australian Capital Territory) (9.55 a.m.)—I, too, would like to make a number of comments on the third reading of the spam bills. It is worth noting that nearly all of the opposition amendments have been supported in this place. We are firmly of the view that these amendments do sharpen and clarify many aspects of the bill that were found to be either ambiguous or indeed inconsistent. I believe that the Senate was more informed because of the committee process and the committee inquiry—and I thank the officers of the committee for their work in that process and everyone who made a submission—and that it was a useful exercise to go through.

I think it is unfortunate that persistently throughout this debate the government have flicked passed many of these very serious amendments, claiming that they are unworkable or creating arguments based on their own view that how they have drafted this legislation is perfect and that they are somehow immune to improvements and refinements. I think that is absurd. The strength of this place is the opportunity it provides for people to engage, preferably in a far more constructive manner, in a debate to try to improve legislation. Right from the beginning—and by the beginning I mean a couple of years ago—Labor has been placing pressure on the coalition government to act on spam. Labor released a discussion paper late last year calling on the government to legislate to help prevent the sending of spam and to reduce the costs incurred by receivers of spam. Indeed, Labor has now been waiting all year for the government to come up with a bill designed to achieve those things.

We found that the bill needed strengthening. In response to Senator Greig’s comments, Labor, having called for this bill, accepts that to attempt to change the basis upon which this bill operates is an unrealistic prospect at this time. Senator Greig made the point that, in a perfect world, we would love to be able to find wording in a piece of legislation to do away with all spam. The opposition do not have the capacity to do that. We have a government bill that we have said we will support. We have done our very best to constructively amend and strengthen the bill. Whether or not we like it, the government have put forward a bill with a definition relating to commercial emails which we think
gives us the best opportunity now to get some laws into place.

Through the debate I acknowledged, as did Senator Greig, the fact that there is a two-year review scheduled in the bill. I think that will provide an opportunity, Senator Greig, to review the operation of the bill. We are obviously facing a situation now where, if the government does in fact reject all of these amendments, we have an imperfect bill. I am concerned about the operation of the bill and will be monitoring it extremely closely to see what refinements and improvements we could possibly make in the future. The bottom line is that we need this legislation. We need this legislation because people are paying far too much money for spam. As we all have acknowledged, it is only part of the solution. In Labor’s discussion paper when we called for legislation, it was one of five or six specific strategies that were needed to start tackling spam. The way this bill is constructed, I do not believe that it is possible to extend it to non-commercial spam. I think that would involve a total rewrite. Labor, as I pointed out earlier, are not prepared to do that to this bill. It is the government’s bill. We have tried to amend it constructively, but it will ultimately pass through this place with our support.

Finally, I will respond to a couple of specific criticisms of Labor by Senator Greig, which I think are extremely unjustified at this juncture. We used examples of where non-commercial emails could be determined. This is part of the ambiguity problem that would be introduced if you introduced non-commercial spam being captured as well. All of those issues that I raised will have to be tested and clarified against the wording of the bill, and that is when you will start getting involved in a total rewrite.

On my reading of the bill, the definition of ‘education institutions’ is about the education institutions’ relationship with students past and present, not about an individual student emailing from home, for example. Again, the status of a student emailing somewhere else is not clear. That definition of ‘education institutions’ would not protect an individual student emailing from home if they were considered or deemed to be spamming in some way.

I certainly commend the amended bill to the Senate. I think it would be a great disappointment if the government ignored the wisdom of this chamber in making a number of very constructive amendments to this legislation. We do all want to improve the situation with spam. We urge the government to consider those amendments extremely seriously.

Question agreed to.
Bills read a third time.

BUSINESS
Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.02 a.m.)—I move:

That government business order of the day no. 2 (Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003 and a related bill), be postponed until the next day of sitting.

Question agreed to.

FUEL QUALITY STANDARDS AMENDMENT BILL 2003
In Committee

Consideration resumed from 25 November.

(Quorum formed)

Bill—by leave—taken as a whole.

Senator ALLISON (Victoria) (10.05 a.m.)—I move Democrat amendment (1) on sheet 3225:

(1) Schedule 1, item 1 page 3, (lines 16 and 17), omit paragraph (b), substitute:
(b) ensure that where appropriate, information about fuel is provided when fuel is supplied, in particular in relation to:

(i) relative fuel efficiency; and

(ii) relative effects of fuel emissions on public health and the environment.

This amendment changes the objects of the act. As I said in my speech during the second reading debate, this legislation is about the labelling of fuels. We know that the first fuel to be labelled, according to the government statements, is ethanol. I suggest to honourable senators that this may well further damage the confidence in ethanol blends as a fuel, and this is something that we should be trying to avoid at all costs. There are great benefits to ethanol blended fuels. Ethanol is an oxygenate, which means that it makes fuel burn cleaner; it raises octane levels while eliminating the need for harmful chemical additives to fuel, and they would include benzene, toluene and the like; it reduces carbon monoxide and other harmful greenhouse gases; it is a renewable source of fuel; and it provides rural and regional communities with job creation prospects and farmers with better incomes and an opportunity to diversify their crops.

There is every reason to promote ethanol. In fact, the Prime Minister announced some time ago that there would be a target of 350 million litres of ethanol on the market by 2010. Also, back in July the Minister for Transport and Regional Services, Mr Anderson, said that he would like to aim for at least 80 million litres of fuel ethanol and biodiesel being available to Australian consumers by June 2004. That is pretty unlikely at this stage with only six months to go. Unless we can build the confidence in ethanol, it is not going to happen.

The Democrats fear that, if the only labelling which is to be required of fuels at the retail level is a warning that this fuel does contain ethanol, we are simply going to add to that lack of confidence. Our approach has been to say that labelling is good and knowledge about content of fuel is also good. I would very much like to know if benzene and toluene have been added to the fuel that I use, because I know how damaging they are to human health. We do support the idea that we know what is in fuel, but the fact of the matter is that petrol has probably 100 or more additives to it, so it is not a reasonable approach to say, ‘Let’s list all the additives.’

The question is: why are we isolating ethanol in this whole debate without saying what the benefits of ethanol are?

As I have said many times in this place, I think the Labor Party has been very destructive in this whole debate, adding to the lack of confidence that consumers have in ethanol. I think the government have been extremely slow to move. They have not been prepared to come out and talk about the benefits of ethanol. Now we see the next stage in that process, which is again likely to do further damage. What we do not have is any sort of education or promotion program. We have a committee somewhere that the government have set up to look at building confidence in ethanol, but at this point in time we do not know what is going to come out of that committee. All we have is a stated intention on the part of the government that this legislation will be a framework for putting in place the labelling system and an intention to go first of all with ethanol—and it may be that that is as far as it goes. So we might end up with signs all around the country saying, ‘Beware: this fuel contains ethanol,’ and then get no further.

We would like to see the objects of the act changed to include the words:

(b) ensure that where appropriate, information about fuel is provided
when fuel is supplied, in particular in relation to:

(i) relative fuel efficiency; and
(ii) relative effects of fuel emissions on public health and the environment.

It seems to us that, provided we are sure that ethanol blends are not going to harm the vast majority of cars—and I think we can be sure of that, although there is a review which is as yet incomplete—ethanol should not be singled out. Again I urge the government not to take any steps at all until we know that, but fuels containing ethanol have been used around the world for a very long time. In fact, there is no evidence at all that engines were damaged as a result of using fuels that were blended with even 20 per cent ethanol in New South Wales. So this whole scare campaign is really about nothing.

Senator Abetz—It is a Labor scare campaign.

Senator ALLISON—It is a Labor scare campaign but, as I said, Senator Abetz, your government have not done much to overcome that campaign, and this bill will not necessarily solve it either, unless we take the approach that all fuels need to have standards applied to them and unless we say, ‘Let’s understand what’s in high octane fuels and standard super. What is the difference between those fuels, apart from the fact that one will cost a little more than the other?’ I challenge anyone in this place to tell us what the difference is in terms of health, in terms of the environment, in terms of greenhouse gases and in terms of their effect on vehicles. The fact of the matter is that we do not know that as consumers.

This is an opportunity to get across a very important message and that is: if this fuel has three stars as opposed to four stars then you can be sure that it is not going to be as good as the one with four stars in terms of health, greenhouse, environment and many other criteria that we could include. The sorts of questions we should be asking are: is this a renewable fuel or is it just more of the same fossil fuel; does it benefit farmers; does it benefit Queensland cane growers; and does it benefit grain growers in other states, such as Western Australia, Mr Temporary Chairman Lightfoot? Does it reduce our reliance on imported petroleum products from the Middle East? This seems to me to be a fundamental question.

We could encapsulate all of those questions in a rating system. Instead of that, we have before us a framework which would possibly do it, but we have an intention on the part of the government to go ahead at this stage only with ethanol, simply telling consumers whether ethanol is in or out. It is not telling them that ethanol is actually good, that the blend of E10 is safe, that having it in the fuel will make things like particulates burn up and that it will reduce other substances in fuels which are dangerous, carcinogenic, cause children to have asthma and cause a whole range of problems which cost this country billions of dollars a year in health costs. It will not tell us any of that. All it will do is feed the paranoia which has already been created that says, ‘Ethanol must be bad for you. Ethanol will damage your car to the point where you won’t be able to drive it any more.’

It seems to me that the objects of this act need to be clear and need to explain that this is about the relative effects of fuel emissions on public health and the environment and the relative fuel efficiency, because there are differences across the board. Not all fuels are the same. Not all cars are the same, obviously, either. So we cannot say one way or the other, ‘This fuel is going to achieve this level of efficiency.’ It depends on how you drive; it depends on the car—it depends on all sorts of things. But at least we can make a
start and say, ‘This fuel is more efficient than that fuel, all other things being equal.’

I would strongly urge senators in this place to get behind this approach. It is not at odds with the current bill; it would sit quite nicely with it. It is a framework, as I said, for standards overall. It would set the government in the right direction and it would set consumers in the right direction because they would be informed. They would know where they were heading. We are not opposed to a system which tells people whether ethanol is in or out. But if you go ahead just with ethanol then you miss the point of labelling. You miss the point of consumers making an informed decision about what fuel they will use. I think we have the capacity and the opportunity to turn people around on this, to get them to understand the implications of their behaviour. It is an opportunity that should not be lost.

I strongly urge the government to seriously consider this. My office has been asking that this happen for some time. The amendments were circulated some time ago, so there has been plenty of time to think about it. This does not undermine in any way the bill itself. It is simply a positive way forward which would give ethanol in particular, but also other alternative fuels that could be part of that mix, a rating. We have not worked out exactly how many stars there should be for what. That is not our job. But it is not beyond the wit of the very good people in Environment Australia and various departments to work out such a scheme. We do it for fridges. We do it for a range of products and we do it because we want people to make decisions based on good information about the environment and fuel efficiency. So I strongly urge the chamber to support our amendment, which, as I said, alters the objects of the act to make sure that this is what we are on about, that it is not about something else. It is not about responding to scare campaigns. It is not about responding to the fear of various people. It is time to show leadership; it is time to show the way.

Senator O’BRIEN (Tasmania) (10.16 a.m.)—The first thing I would like to say is that I just heard Senator Allison suggest that this amendment was circulated some time ago. It was not circulated to us some time ago. The amendment document I have is dated 27 November, 8.48 p.m. That was 8.48 p.m. yesterday. As I am advised, we do not have any record of receiving a draft at any earlier stage. In fact, as I understand it, we saw this document today for the first time. The point that I would make is that giving this matter consideration in the context of a specific form of amendment has not been easy as far as the opposition are concerned. Our understanding was that the Democrats would be pursuing some form of amendment, but the exact form was not known to us before today.

The second point that I would make is that I understand that this is about including further information on a label that might arise from a decision by the minister in relation to the regulations and the form of the label. To the extent that we have been able to, we have considered this matter and have consulted with regard to how industry participants perceive this might affect the labelling regime. We do not know what the label design is. The minister has withheld that information from us. We do not know what the regulations propose to say on this matter. The minister has withheld that information from us.

What we do know is that over a year ago Labor announced a policy that fuel containing ethanol should be labelled, that the ethanol component of fuel should be limited to 10 per cent and that people should know that they are buying it. We have had that position for some time. Nearly a year ago now, the minister promised that this legislation would
be promulgated. It has taken us 12 months to get to this point. I make the point again that the opposition waited effectively until August for a chance to look at the detail of the legislation. The matter ultimately went to a Senate committee for a brief hearing. That led to an expeditious report, which has resulted in this matter being before the chamber today.

We are anxious that a labelling regime come into effect. What we have before us now at the eleventh hour is a proposal which would require, potentially, a range of information to be included on labelling. As I am advised, because of the variety of blends and types of vehicles that might use the fuel containing ethanol—or, for that matter, any other substance—we may as well be talking about a label the size of the flag on Parliament House. That might sound like an outrageous statement, but at this stage, at this late hour, we have to try to understand this amendment in the context of the information that we have.

It may be that there is a regime which can accommodate the concerns that Senator Allison raises without requiring that information to be on a label. It may be that there are alternative mechanisms for requiring the publication of information in some form, through appropriate means, whether it be via a web site and a publication or by requiring information to be supplied in some form to motorists by the proponents of particular additives. At this stage, we think it is very difficult to amend the legislation on the run to require this information to be labelled, as distinct from considering all of the options and perhaps at some future stage making provision with regard to the provision of information.

At the Senate committee there was discussion about the regime that existed at the time that unleaded petrol was introduced and the means by which information was disseminated to motorists about the appropriateness of that fuel for their vehicles. As I recall, that mechanism was quite successful. I do not have all the detail of how that worked; perhaps that requires greater investigation. Perhaps the minister could look at those matters in the context of any regulatory regime he is considering, if indeed he does not already have a final draft before him. As I said, we have not been given the courtesy of seeing that draft.

One thing we do know is that the latest estimates reveal that up to three million cars in the Australian motor vehicle fleet are not recommended for the use of ethanol. For that reason, we think it is urgent that this labelling regime come into place. We would not want to see the circumstance where the minister uses some amendment to this legislation to justify further delaying that labelling regime. We believe a labelling regime is urgent, for the reasons I have just outlined—that there are up to three million cars in the Australian motor vehicle fleet for which the manufacturer does not recommend the use of ethanol. I am not in a position to say that the manufacturers in those circumstances are wrong.
year. So we will not be supporting this amendment.

Senator ALLISON (Victoria) (10.24 a.m.)—I wish to respond to Senator O’Brien. It is the case that the amendments were circulated only a short time ago. We were expecting this bill to come on a little later in the day. The government also did not receive the proposed amendments until yesterday, but the government did have our briefing notes with regard to our intention. This issue was flagged in my second reading contribution, which was some days ago, and it was also raised at the inquiry that Senator O’Brien mentioned. The point was made: why should ethanol be singled out in a labelling scheme? Again I reiterate that this amendment is about a system that is comprehensive, not about identifying one fuel and saying that it is problematic.

Senator O’Brien said that there are three million cars on the road that are not suitable for ethanol use. I do not believe that. I do not believe that the document he quotes from is an accurate one; it is certainly not a complete one. I would expect that the review currently under way will show otherwise. In fact, all of the testing that has been done has shown otherwise. Despite the claims by some auto manufacturers, we have not seen backup to suggest that is the case. It is the case that cars in other countries are being happily driven around on far more ethanol than we are talking about here without doing damage. The cars in this country are not significantly different from cars elsewhere. In fact, I agree with Senator O’Brien: there is a smidgeon of doubt, because we have not had this review completed. So I would strongly urge the government not to proceed down this path. If this amendment goes down, and I sincerely hope, Senator Abetz, that it does not, I would hope that we do not start putting warning labels on fuel that has ethanol in it until we know there is a problem, until we have exhaustively proceeded down the path of knowing whether the claims are accurate.

As I said, Labor has taken the opportunity of running a quite effective campaign against ethanol as a result of some auto manufacturers’ claims that this would breach warranty and so forth. That has had a hugely damaging effect on the industry, and we really need to avoid that in future. So let us be certain: let us take the information that is available from other countries; let us demand to see the studies where the claims are made that damage will be done. I do not believe they are there. I think there is a degree of conservatism, but we also need to understand that there are places where ethanol is actually mandated, where you cannot buy your petrol without ethanol in it. There is every reason to question these studies, even those done on older vehicles, and the claims made that they are not suitable. People I have talked with tell me that there might be some classes of very old vehicles but that if they are maintained correctly it is not an issue. If there is no water in the tank, it is not an issue. If there is no rust on the various mechanical bits in the engine—and I do not know what they are exactly—it is not an issue.

Ethanol has been blown out of all proportion as an issue. We must not move on this to further damage the industry without having that knowledge. As I said, no-one can claim that damage has been done to their engine as a result of ethanol now, so there is nothing to be lost by our waiting. Let us have a full scheme in place. Let us wait before we stick labels on things telling people that they must not use ethanol and scaring them. Let us start with education: let us start with saying what is good about ethanol and then proceed slowly and carefully down the path so that we do not further damage confidence.

Senator CHERRY (Queensland) (10.28 a.m.)—I want to contribute very briefly to
this debate to support the amendment moved by my colleague Senator Allison. The ethanol industry, the development of it and the confidence in it, is so crucial to Queensland. People would be aware that only this week 50 mayors from around Australia, particularly Queensland, were in town to urge the parliament to give a viable, sustainable future to the ethanol industry. Mayors from Dalby, Burdekin Shire, Cairns, Johnstone Shire and others from Queensland were in town only this week, urging this parliament to build confidence in the ethanol industry.

I think that is crucial because there are a whole range of investments in my state, particularly in Dalby, with an $80 million biofuels refinery, and up north in the sugar industry, waiting for some confidence to be built into ethanol. I had my car filled up at a petrol station in Brisbane at the weekend, and every bowser had a sticker on it that said, ‘This fuel contains no ethanol.’ I went in to pay for my petrol and there was a big sign behind the cash register, ‘None of our fuel contains ethanol’. The Labor Party can be proud that they have achieved the outcome that petrol stations all over Brisbane and all over Australia have stickers saying, ‘We do not sell any ethanol’. The confidence in the industry has been destroyed by the campaign that has been run, and this bill will do nothing to improve it without the amendments we have put forward.

Bizarrely, in Queensland they are running trials to encourage the use of ethanol. In Cairns, Caltex is running its E10 trial and encouraging people to move to ethanol blends. But they are up against it because, across the state, pretty well every petrol station has posters and stickers urging people not to use ethanol. So it is essential that we do not target ethanol in fuel standards; we should move to confidence building devices.

I was a tad disappointed by Senator O’Brien’s comments. I would like to read to the chamber some comments that the Queensland Premier, Peter Beattie, put out in August. They are really worth noting. He said:

Growth in the ethanol industry could particularly benefit Queensland sugarcane farmers. However, we need to grow the ethanol market throughout Australia to deliver a real boost to activity in regional Queensland.

He outlined three things that need to happen:

First, consumer confidence in ethanol needs to be rebuilt. Initiatives such as extending the Cairns’ Caltex trial will play an important role. Second, the federal government needs to extend the excise subsidy indefinitely. Third, a more competitive environment for ethanol production that rewards producers who innovate and reduce production costs must be encouraged.

It is absolutely essential that we get confidence growing in this industry and that we get consumer confidence growing. Over the course of this year damage has been done by the various misinformation campaigns, which Senator Allision referred to, and it now has to be pulled back. And it can be pulled back with decent fuel standards that deal with the issues that people need to know about—greenhouse emissions, health emissions and issues relevant to their purchase of fuel—rather than scare tactics.

I appeal to the chamber, on behalf of my state of Queensland, to support the amendments moved by Senator Allison to ensure that, when we move to a fuel standards regime of labelling, we make it one that will build confidence in an alternative fuel and in an industry which has real potential to create jobs and investments across my state.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (10.32 a.m.)—I rise to speak on the Fuel Quality Standards Amendment Bill 2003. I find myself in agreement with the Democrats, and I welcome their support for ethanol.
This is in stark contrast with the Labor Party, which tried desperately to sabotage this industry because they thought they could get some political gain when ethanol was caught up with Manildra. The ethanol industry had to pay the price.

I now find that we are moving towards labelling. I have just spoken to the advisers, and they have some doubts as to whether Senator Allison’s amendments, while they would give some support, would be a practical way to address this problem. They have explained it to me and, going into detail, I am not sure that we can support Senator Allison’s amendments but we certainly support the thrust of what the Democrats are saying.

Senator Cherry spoke of ethanol being sold in Cairns and of ethanol trials. I am glad to advise the chamber today that a service station in the Burdekin will be opening for business and will sell ethanol fuel. We have taken a lot of punishment, mainly from the Labor Party and from the RACQ. I still do not know what their motivation is, but they seem to have some sort of set against ethanol and they have set out to torpedo the ethanol industry. I must admit that it did not cover them with any glory or credit at all, and I told the instigator of that campaign to his face. No doubt I will tell him again when I see him.

But it seems that we are moving towards an ethanol regime now. It seems that it will depend on the amount of excise and it will also depend on when that excise cuts in. I hope that we will come up with an excise regime and a cut-in period that will get the support of the chamber. Once those two things are in and we have decent labelling that does not have a warning saying, ‘This fuel contains ethanol,’ which is tantamount to saying, ‘Don’t put it in your car’—and people will always be careful with their assets—then I think we will be up and away.

If ever there was an industry that needs this legislation, it is the sugar industry. It is relying on corrupted world prices of sugar, at around 5c a pound. While sugar is at 5c a pound, the sugar industry has no future. The only future, when the price is 5c a pound, is to get this ethanol legislation through and get ethanol out into the service stations with decent labelling that has no connotation that there is anything wrong with ethanol. The cars that use ethanol in the United States are the same cars that we use out here. They have the same motor standards. Once this gets going, I think the sugar industry will see some hope for the future—it will get with it and the industry will start up.

We are on the verge of starting something new and great. It is something that will play a significant role not only in the sugar industries but throughout rural and regional Australia—in the grain industry and the sorghum industry. It will keep prices reasonably high. Farmers will not have to depend on corrupted world markets, because they will have a domestic market that will rise or fall in unison with the price. I can only speak very highly of the support of the Democrats for this particular bill. I am very disappointed with the Labor Party, which saw raw politics as a chance to somehow implicate the Prime Minister in Manildra. Having done that, they decided that if someone had to suffer, they would wipe out the new ethanol industry. People are looking for positive steps forwards with answers to problems. I think this bill, which supports the ethanol industry, is the way forward. I commend the bill to the chamber.

Senator ABETZ (Tasmania—Special Minister of State) (10.37 a.m.)—In a dynamic economy such as ours, we need a transport industry. That transport industry relies on fuels and, unfortunately, when they are burnt, those fuels provide toxins and other by-products which are damaging to the
environment. What we have to do is ensure that any regime that is put in place allows a diverse country such as Australia to continue to have a dynamic transport system to allow our economy to prosper. In doing so, we need to ensure that we seek to protect the environment as much as we possibly can. I will make a few general comments first about the Democrat amendments and then pass to some of the specific points that have been raised.

The amendments proposed by the Democrats would mean that the national fuel labelling scheme would take the form of an environmental rating system for all fuels. That system would take into account the relative fuel efficiency and weighted emissions impact of each fuel. While this idea may seem desirable in theory, in practice implementing such a scheme would be extremely difficult, if not impossible. The environmental impact of each fuel varies significantly through factors that go beyond the fuel itself. These include the design of each vehicle’s engine and emissions control technology, as well as driving style, vehicle load and engine condition. For example, emissions from premium unleaded petrol, when used in a vehicle designed to run on this fuel, will differ significantly from the emissions from the same fuel used in a vehicle that is not optimised for premium unleaded. Similarly, two vehicles of the same model will have different emissions if the vehicles have been maintained differently.

Analysing greenhouse gas emissions over the fuel cycle presents further difficulties, because greenhouse gas emissions vary according to a range of factors, including the technology and feedstock used to produce the fuel itself. As a result, the greenhouse footprint of a particular type of fuel, such as an ethanol blend, would vary depending on where and how the product was produced. In practice, retailers can source their fuels from different producers, including overseas producers, and the fuels then are combined in their storage tanks. The issue is further complicated by the fact that scientific studies on the environmental impacts of different fuels are many and varied, and the data are often inconclusive. The health impacts of the different pollutants are not known with any certainty, and there is no accepted weighting scheme for the different pollutants. This is an extremely complicated issue that is not likely to be resolved in the near future.

I would say to the Australian Democrats that we accept where they are coming from. We can understand their motivation—and I do not seek to denigrate or belittle that in any way, shape or form—but, unfortunately, the complexities are such that we are not at this stage in a position to give the sort of definition that I think the Democrats are calling for. This makes a fuel rating system vastly more complex than, for example, the energy efficiency rating on appliances. If it went ahead, it would be giving oversimplified information to motorists and would risk giving them a false impression of the actual impact of using a particular fuel in their vehicle.

Once the government has the power to label fuels, the minister will be able to consider the need for labelling other fuels on the merits of the case. However, it must be clear that there is a need for such labelling and that the labelling would be in the public interest. The labelling that we envisage as a result of this legislation is not about putting warning labels on; indeed, it is designed to build and boost confidence. I thank the Labor Party for their support on this issue but, without seeking to get them offside, I do agree with Senator Allison that there was an unfortunate occurrence earlier on where a scare campaign was run against ethanol, which I do not think was helpful or beneficial to either the consumer or indeed the environment. It was a bit of a stunt, but we are hopeful as a govern-
ment that this labelling regime ultimately will allow confidence to be boosted. I would say to the Australian Democrats: you are not dealing with a Labor government on this labelling; you are dealing with a Liberal-National Party government on this labelling, and we are, in general, supportive of the ethanol industry.

To take up Senator O’Brien’s point, there is no draft label. That is not because of any discourtesy. I can tell you there is no draft label—that is why it has not been shown to anybody. It does not exist. But, as I understand it, this legislation will allow regulations to be promulgated, and part of the regulatory regime would be the label. That label, therefore, would potentially be a disallowable instrument. Therefore, this place would see the label, would be able to pass judgment on it and would be able to disallow it if it did become the size of the Australian flag flying on top of this place, as Senator O’Brien has suggested that it would under the Democrat proposal. I take Senator O’Brien’s point on that, and that is why we as a government do not support this Democrat amendment or, indeed, the others that flow from it. All of them are basically covering the same issue. If there is one thing that we as a government do not support this Democrat amendment or, indeed, the others that flow from it. All of them are basically covering the same issue. If there is one thing that we as a government are known for, it is that we are a very practical government. We look at problems and look for practical solutions. So I can assure Senator O’Brien and those listening that we will not be looking for labels the size of the Australian flag on top of Parliament House.

In relation to the label and warnings, Dr Kemp has put out a media release in which the only warnings mentioned were to apply to outboard and aircraft engines. For the average motorist we believe the mix will be of benefit but, at the end of the day, a lot still needs to be determined, discussed and sorted out. To get us going down that path we need this bill passed unamended—I would respectfully suggest—and then, when we have the capacity under this legislation to make the appropriate regulations, we can sort out the detail, after a lot of consultation. If there is another hallmark of this government, it is that we are a consultative government. We do listen to the community and the interest groups on various issues and then come down with a practical outcome for the benefit of the whole community. That is the basis on which we are approaching this issue. I thank the Labor Party for their opposition to the Democrat amendment. I understand where the Democrats are coming from but, with respect, it would be over-prescriptive at a time when the information simply is not at hand. I invite the Senate to proceed with this bill without further delay.

Senator O’BRIEN (Tasmania) (10.46 a.m.)—There were a number of comments made in the course of the debate that I must respond to, and I will start with those of Senator Boswell. One would have thought that he was of the opinion that the Labor Party was not supporting this legislation. I can understand that Senator Boswell is not connected with reality this morning. It is often the case that he comes into this chamber and makes comments which are, may I say, a long way from the facts. And that is what he did this morning. I contrast his allegation that the Labor Party does not support the ethanol industry with the fact that the ethanol industry in this country as it exists now was substantially brought about by the ethanol bounty put in place by the Keating Labor government and abolished by the Howard coalition government. Senator Boswell was in this parliament when that occurred. He supported the removal of the ethanol bounty, so he has an absolute nerve to come in here and pretend that the coalition has credentials with regard to ethanol.

With this legislation, of course, we have seen a response to a campaign for consumer information. What was occurring, particu-
larly in the Sydney market, was the inclusion of volumes of ethanol in fuel far beyond that which was considered safe—so far as vehicle manufacturers were concerned—for the vehicles in use in Australia. A point was made that the vehicles in Australia are the same as those in the United States. They are not. There are vehicles in the United States that are manufactured specifically for high quantities of ethanol in fuel. Manufacturers know, in the United States, that ethanol is mandated and they produce vehicles that are equipped to deal with that fact. That is not the case here. It is not a mandated component—at least, not at this stage or in contemplation, as I understand it—and so we have a different motor vehicle fleet here than exists in other countries. I made the point in my second reading contribution that General Motors send a vehicle from Australia to Brazil—it is one of the Commodore range, as I understand it—but they modify the vehicle to cope with the very much higher ethanol concentrations which exist in fuel in Brazil. That is quite appropriate. Now, if that car was generally available here and the motor vehicle fleet generally reflected that, the need to limit ethanol to 10 per cent possibly would not exist. But, at the moment, the opposition believes that that need exists, and the government obviously does now as well, although it took some time to come to that point.

As to the ethanol trials that are taking place in North Queensland, the Caltex trial, as I understand it, involves a warning label. It lets motorists know, as it should, that they are buying fuel that contains ethanol and that there are facts that they should be aware of in putting that fuel into their vehicles. That has not stopped the trial from going ahead successfully, as I understand it. It does inform consumers that they are putting something into their car and they should understand what the manufacturer of that vehicle has to say about the inclusion of ethanol as a component in the fuel. There is nothing wrong with that. Consumer knowledge, as far as I was aware, was something the Democrats and—I thought—even The Nationals supported.

The worst thing that emanated from Senator Boswell today was the suggestion that the sugar industry is going to be a major beneficiary of any expansion of the ethanol industry in this country. The facts are that, currently, about 96 per cent of the ethanol used in or produced for fuel in this country is manufactured from grain starch—wheat. A number of the proponents of plants—such as the plants at Dalby, I think, talked about by Senator Boswell—are proposing to use sorghum, not sugar, as a feedstock. There may be some benefits over time for the sugar industry out of an expansion of the ethanol industry. In fact, I think there are some proponents of ethanol existing in the industry now who think they will expand their production, and the trial in North Queensland obviously envisages using sugar as a feedstock. But the reality is that, if there is a substantial expansion of the ethanol industry in this country, it is very unlikely to be based on sugar. It is much more likely to be based on grains. Perhaps in some parts of Australia sugar beet may be grown for that purpose. Who knows? It is too early to say. So the Labor Party certainly rejects that sort of scandalous fearmongering by The Nationals.

I turn to the contribution by Senator Cherry. I am pleased that he has now come to the ethanol debate. It is good to see that he has brought himself up to speed on the issues. It is obviously a political issue running in his state at the moment. He expressed concern that some petrol stations in Brisbane advertise that there is no ethanol in their fuel. Obviously, there is a consumer response to the fact that ethanol quantities in fuel were at levels which manufacturers suggested could
possibly void warranties. So we see the labelling regime proposed here as beneficial to the development of the ethanol industry. It is an opportunity for the ethanol industry to say, ‘You’re able to understand what you’re putting in your car. You’re able to understand that it’s limited to a certain quantity. You’re able to review what the manufacturer of your vehicle recommends as to the appropriateness of that fuel for your vehicle, and you’re able to make an informed decision.’

Every proponent of development in the ethanol industry that I have spoken to has agreed that it is in the best interests of the industry to have consumer confidence and support. The Labor Party believe that that will be achieved by allowing people, when they make a decision to put fuel with ethanol in it in their cars, to understand the volume of ethanol involved and to compare it with manufacturers’ recommendations. So we absolutely reject the suggestion that what we are about is in any way inhibiting the industry. We believe that a labelling regime and a regime which limits the quantity to 10 per cent are in the interests of the further development of the industry.

As for the suggestion that the industry has been subject to a scare campaign, the reality is that the scariest thing about what was occurring was that, particularly in Sydney, motorists were purchasing fuel with an ethanol component well in excess of 20 per cent. Motorists were taking risks with the warranties of expensive motor vehicles without knowing that they were taking those risks. So we are absolutely unashamed that we were part of drawing that fact to the attention of Australian consumers, particularly in the Sydney market. We are absolutely unashamed of the fact that they may be voiding their warranty or damaging their vehicle.

On the best advice that the motor vehicle industry gives to us—and, I am sure, to the government and to the minor parties—there are vehicles for which the use of ethanol is inappropriate. I think, if there is a debate, it is a debate which should be had. I welcome the contribution of Senator Allison, who has questioned some of those findings. If I were the owner of a motor vehicle for which the manufacturer suggested the use of ethanol was not recommended, I would rather not have an argument with them if they then said that my warranty was voided because of the use of ethanol. I would rather have all of the facts out in the open. I would be cautious about my motor vehicle rather than, at the end of the day, go along and say, ‘I’ve had a problem. I want you to fix it under warranty’ and then have the manufacturer say, ‘No, we told you that you couldn’t use ethanol, and you did.’ I would rather have all the facts than have to argue that I did not know, when I went into a particular service station, that I was putting ethanol into my vehicle, and then need to sue the owner of the service station and prove that there was ethanol in the fuel.

I would rather an open and transparent system, and that is what this legislation proposes. As I said at the outset, we do not want to allow this minister an opportunity to sit on his hands any longer in relation to establishing the regime that is proposed in this legislation. We want it under way as soon as possible, and that is why we do not want to see this legislation delayed. We will not be supporting the amendment, but we are interested in further discussing any measures which can properly inform the consumer without providing for a scheme which is impossible to comply with.
Senator ALLISON (Victoria) (10.57 a.m.)—Senator O’Brien, we agree with you that there needs to be transparency and openness in labelling. That is what our amendments are all about. We are not saying, ‘Don’t label fuel if it’s got ethanol in it.’ We are quite happy for that to happen. In fact, our amendment (4) says that the labelling should be a graphic representation. I think the Caltex one is a good one. As I understand it, it has a simple little green drop with an ‘E’ in the centre of it, and I think that that is quite appropriate. I also think it is appropriate for there to be a list somewhere at the service station of vehicles for which the manufacturers say ethanol is not appropriate. I must say that I do not believe that that is a very long list. I think we need to go through this process before we rush into it.

I say to Senator Abetz that, on this issue at least, this is not a practical response. You say that you are a practical government; I would say that you are reactionary. That is what this has all been about: reacting to a scare campaign in an inappropriate way. Senator Abetz says that you cannot do this, because it is too complicated—you would end up with something oversimplified, and we cannot have that. I say that we already have it in the auto industry. If you go to buy a new vehicle these days, you will find that there is a star rating. People are happy to say, ‘All right, I can see that this car is better than that car in that respect, so that’s the car I’ll go for.’ They do not say, ‘How did you get to three stars? What does that mean? Is that varied by the way I drive the car or the way it’s maintained?’ They accept that there is some advice which is properly scientifically based and provided to consumers to assist them in their choices. If you buy a fridge with a five-star energy rating and you put hot foods in it, it will not have the same rating as if you do not. If you leave the door open all night, it will not be as efficient as if you leave the door closed. These are things that consumers understand. We are not talking here about dealing with morons. People are accustomed to having systems in place that do not necessarily spell out all the details.

You do not need to go into matters to do with driving or maintenance. You can tell people it is very good to maintain your car. That way you will improve the efficiency: no matter if it is an inefficient car or an efficient car, you will still improve your efficiency. You can tell them that driving in a particular way is going to save fuel. As someone who drives a Prius, a hybrid petrol-electric car, I know very well that the way I drive affects the fuel consumption, and you do too, Senator Abetz. There is a little graph that comes up all the time and tells you how you are going. You need both the information which allows you to make a judgment in the first instance and the information that says, ‘In addition to that, this is what I can do to make this fuel safer or more efficient.’ So I cannot accept the arguments that you have put up.

Scientific studies are inconclusive. So what? They are probably inconclusive about vehicles as well, but we do not need to know every last bit of detail in order to put together a rating scheme which might be based on four or five stars. I do not think there is a problem with that. We currently have that information. The CSIRO has done a very extensive summary of the relative merits of different fuels. It has reduced it to ticks and crosses and you get two dashes if it is a great improvement on a standard fuel, standard low-sulfur petrol. That schedule is a one-pager which is simple to understand. It does not need to go into fine detail about particular points; it simply gives you the information that you need based on the knowledge that is available at the present time. So it is a nonsense to suggest that this is too complex to do.
That CSIRO study, that schedule, does take into account life cycle. In fact, there is quite a lot of argument about ethanol and its rating in that respect. I heard the other day a suggestion that there were errors in the assumptions that were being made about ethanol, that in fact greenhouse wise it had taken into account all sorts of things that farmers no longer do. Of course there will be arguments around the edges, and that is appropriate too. That sets up a kind of competition so that fuels might improve their rating in order to get that extra star. I can see this being a very powerful force for change for the better. It is not beyond our capacity to do this, Senator Abetz. As I said, with regard to those variations of driving style and design of each of the engines and whether or not maintenance is being carried out, consumers accept that there are those variations but it does not make any difference. If you start with an efficient, low greenhouse emission fuel then, no matter how you use it, it is still going to be better than another fuel which is not. So we are talking about the relative merits—not the absolute outcome but the relative merits—of the fuel that is going into your car. That is what we need to worry about.

It is clear that neither of the major parties will support these sensible amendments, but I do ask the minister to give the Senate some assurance that we will not just be stuck with a label which says, ‘Guaranteed no ethanol in this fuel.’ I think we do need to know that the government intends to move in this direction. Otherwise, we should not be dealing with a fuel quality standards amendments bill; we should be dealing with a ‘Let’s get rid of ethanol’ bill. That is what it should be called.

Senator Abetz—Absolutely not.

Senator ALLISON—Senator Abetz, you say this is practical and this is about boosting confidence in the industry, but it is not. In fact, it is going to do the opposite. If this is about ethanol only, let us have that in the label of the bill itself. If it is not, can you assure us that it is clear that ethanol is going to be first out? We can disagree or agree about what that is going to do to confidence about the fuel, but can we at least have some assurances that we will move from here to having a labelling system which gives consumers more information than they currently have about fuels so that they can make a choice other than a choice about price? That is really all we have at the present time except what petrol manufacturers and retailers want to tell us. We do not know about those other things such as benzene and toluene—all those additives and ingredients in petrol which we know to be damaging to our health. So can we have some assurance that, once we set up this framework, we will not just end up with ethanol warnings but we will have something beyond that which tells us more about the fuels?

Senator ABETZ (Tasmania—Special Minister of State) (11.05 a.m.)—I can give that assurance.

Question put:

That the amendment (Senator Allison’s) be agreed to.

The committee divided. [11.09 a.m.]

(The Chairman—Senator J.J. Hogg)

Ayes............. 8
Noes............. 43
Majority......... 35

AYES

Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.  Cherry, J.C.
Greig, B.  Murray, A.J.M.
Nettle, K.  Stott Despoja, N.

NOES

Abetz, E.  Barnett, G.
Bishop, T.M.  Boswell, R.L.D.
Brandis, G.H.  Buckland, G.
I withdraw amendment (5). I do not propose to extend this debate much longer. These amendments put into effect that which I have already debated earlier in amendment (1). Amendment (2) requires the minister to create a fuel information standard for all kinds of automotive fuels. That would ensure that all fuels, not just one type, are labelled. As I have said, we believe motorists deserve to know the effects of the fuel they buy, and it would prevent one specific fuel, in this case ethanol, from being singled out. Amendment (4) requires the minister to create a standard or label for all kinds of automotive fuels. That would be a graphic representation, either a star system or some other. We anticipate it would be similar to the white goods energy efficiency label or, indeed, the existing one for new vehicles on sale. I can see there is no support in the chamber, but I am somewhat encouraged by the minister’s response that this will not just be about ethanol. The Democrats will certainly be pursuing this question to
make sure that is the case. I believe that to go down this path of letting consumers know about the fuel they are buying and not just whether it has ethanol in it or not is a very positive way forward.

Senator FORSHAW (New South Wales)  (11.15 a.m.)—I thank my colleague Senator O’Brien for stepping into the breach at short notice when the Fuel Quality Standards Amendment Bill 2003 was brought on. I was engaged at another commitment. Senator O’Brien outlined in some detail the opposition’s position in regard to the Democrats amendments in total, which we were unable to support. That debate occurred quite comprehensively during the consideration of previous amendments, and I endorse those remarks.

The TEMPORARY CHAIRMAN  (Senator Chapman) — The question is that amendments (2) to (4) moved by Senator Allison be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN — The question is that the bill stand as printed.

Question agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ABETZ  (Tasmania—Special Minister of State)  (11.17 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator ABETZ  (Tasmania—Special Minister of State)  (11.17 a.m.)—I move:

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

Question agreed to.

MEDICAL INDEMNITY AMENDMENT BILL 2003

MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION AMENDMENT BILL 2003

Second Reading

Debate resumed from 28 November, on motion by Senator Kemp:

That these bills be now read a second time.

Senator ALLISON  (Victoria)  (11.18 a.m.)—I rise to speak to the two medical indemnity bills before the Senate today. These bills give effect to promises made to the medical profession by the Minister for Health and Ageing in October this year when the medical profession expressed strong opposition to the IBNR indemnity levy, relating to ‘incurred but not reported’ liabilities. The bills address two concerns that doctors have: that they will be personally liable for theoretical blue skies claims, and doctors contributing to the cost of IBNR claim liabilities that were assumed by the government. The bills address these concerns by providing that claims exceeding $20 million, or the amount agreed to in a doctor’s medical indemnity cover, are met by the government and by establishing a moratorium on the IBNR contributions for 18 months so that doctors pay a maximum of $1,000 for the first year and part contributions for the six months thereafter. The moratorium arrangements apply to those members of United Medical Protection, UMP, who were required to pay the contribution imposed in the Medical Indemnity (IBNR Indemnity) Contribution Act 2002.

UMP was the largest medical insurer in Australia, with coverage of approximately 60 per cent of medical practitioners nationally and 90 per cent in New South Wales. From its creation it pursued an aggressive market
growth strategy, which no doubt contributed to the state it is in today. UMP’s history of inadequate provisioning for future claims was a problem highlighted by the Minister for Health and Ageing in his second reading speech on these bills. As is widely known, following the provisional liquidation of UMP, medical indemnity providers were brought under the umbrella of APRA regulation. Legislation was introduced last year to put in place arrangements so the government could, as it had promised, meet the cost of unfunded IBNR liabilities of MDOs for incidents that occurred up to 30 June 2002, which are estimated to be in the vicinity of $460 million. It is the payment of these liabilities over a term of 10 years that has caused the most concern to practitioners in the medical profession, who threatened to cease practice, retire early or withdraw their services from public hospitals.

A reduction in services, coupled with declines in bulk-billing rates, creates a threat to the health of the community and to those who are the most vulnerable, such as the elderly and the poor. For this reason, and as a result of strong lobbying by the AMA, the government chose to put off the inevitable by introducing the moratorium for 18 months. Depending on the outcome of the government medical indemnity panel, which is due to report on 10 December—after 18 months—doctors will be required to recommence payments in accordance with the original calculations, except that the amount of the outstanding IBNR liability will be recalculated yearly to incorporate changes that may affect the outstanding liability, such as tort law reform.

We think the government’s handling of the insurance crisis has been ad hoc and reactionary, including the response by state governments, which enacted a flurry of tort law reforms without knowing the true nature of the claim problems and, thus, benefits it would produce. While the Democrats are supportive of this bill, we would like to emphasise the importance of other health professionals who have been completely overlooked by the government during the insurance crisis. I acknowledge that the medical profession play an essential role in the community; however, I am sure that midwives, who would have appreciated a fraction of the assistance afforded to UMP and the AMA during the insurance crisis, also play an essential role. In fact, a fraction of the assistance was all that midwives had been asking for—yet, unfortunately for them, for those who used their services and for the nation’s mothers, their request fell on deaf ears.

As the Australian Democrats have highlighted on a number of occasions, midwives continue to face many difficulties in securing appropriate insurance for their work, which is affecting the levels of services available for expectant mothers. Also, despite the fact that the supply of midwives is only two-thirds of the demand, midwifery education is at risk when universities are unable to obtain professional indemnity insurance for their students. Universities in Victoria and South Australia claim that the demand for midwifery courses was high, but with 1,500 applications for 120 places they lacked sufficient funds to expand those courses to meet student demand.

The World Health Organisation has highlighted that midwives are the most appropriate and cost-effective carers to be assigned to healthy women during normal pregnancy and birth. It is very disappointing that not only are they overlooked by the government in terms of insurance cover but their contribution is not acknowledged in the government’s health or higher education packages.
This failure is a disappointment to the Democrats but, more importantly, it is a disappointment to the 250,000 women in Australia who rely on the work of midwives when they bring children into the world. I think that, in some ways, there is a moral hazard associated with insurance, such that if insurance is cheap then why worry about doing things better if we can buy our way out of the problem? We must be mindful of this, and an appropriate balance must be reached with regard to reforms during any so-called insurance crisis.

While risk management has been one of those jargon terms that many people have used in recent years, with very cheap insurance over the years there has been very little incentive to implement these kinds of strategies. That is why we need to take stock of the last few years and start focusing on how we can do things better, and this applies across the board to all professionals, including the medical profession.

I think that the prevention of accidents is an important issue that has rarely been highlighted since the insurance crisis began. Since the collapse of HIH and UMP, so much concentration has gone into arguing about rising claim costs and becoming an increasingly litigious society. But, arguably, while community expectations and standards may have changed over the years and people are becoming more willing to make claims, it is just as plausible that there has been an increase in the number of negligent acts causing injury for which someone is liable, and this matter has to be addressed by all governments.

To conclude, as I have said, the Democrats are supportive of the bills before the Senate. However, the community cannot any longer afford the same ad hoc and sporadic solutions to the insurance crisis that have characterised the government’s approach so far. We await the outcome of the panel discussion on 10 December and hope that an appropriate solution can be reached that considers not only the ongoing viability of the medical profession but the safety, health and purse strings of the community.

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads) (11.25 a.m.)—For the sake of moving the bill along, I would like to thank both senators who have contributed to the debate and I commend the bills to the Senate.

Question agreed to.

**Third Reading**

Bills read a second time.

**NON-PROLIFERATION LEGISLATION AMENDMENT BILL 2003**

**Second Reading**

Debate resumed from 24 November, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

**Senator CHRIS EVANS** (Western Australia) (11.27 a.m.)—Labor supports the Non-Proliferation Legislation Amendment Bill 2003. Nuclear weapons have for decades been both the symbol and the substance of our greatest fears. The questions of nuclear disarmament, nuclear weapons control and nuclear weapons proliferation have thus been among the very foremost of questions that affect our society. The Australian Labor Party has a long and proud history of commitment to nuclear disarmament and non-proliferation. The Whitlam, Hawke and Keating governments made a foreign policy priority of pursuing non-proliferation, disarmament and the banning of nuclear tests. At a time when it seemed all too possible that the conflict between great conflicting ideologies could lead to a war which would con-
sume and annihilate the earth. Australia helped take the lead in fighting to eliminate these weapons, with their vast destructive capacity. The determined and rational opposition to the proliferation and use of nuclear weapons, shown by countries such as Australia, was crucial in reducing the global temperature and the threat of war.

We are, again, faced with the possibility of the use of weapons of mass destruction. Our nightmares are no longer those of the Cold War. Instead of fearing the militarism of Cold War generals, we dread the fanaticism of those who see the world as divided between the faithful and pagan—the saved and the damned. We live in a new era where small states, such as India, Pakistan and, most alarmingly, North Korea, possess nuclear weapons. We live in an era where we must be alert to the possibility that the next nuclear threat will not come from a nation but from an individual. The potential for the acquisition of weapons of mass destruction by terrorist organisations is our newest nightmare. It is consequently vital to ensure the security of nuclear facilities and nuclear material in Australia. It is also consequently vital to continue to work towards the complete elimination of weapons of mass destruction, such as nuclear weapons.

The Howard government has failed on the second front. We must note that one of the first things that John Howard did in this area, in his very first year as Prime Minister, was to fail to support the report of the Canberra Commission on the Elimination of Nuclear Weapons and its phased program of disarmament. Indeed, since the election of the Howard government in 1996, Australia has ceased to be an international leader in nuclear non-proliferation. Neither non-proliferation nor disarmament have been priorities for the Howard government. Indeed, even now, genuine non-proliferation is not part of the debate. We have no news of John Howard picking up the phone to his great mate George Bush and suggesting that the USA sign the Comprehensive Nuclear Test Ban Treaty.

Australia undertook to provide 20 monitoring stations to detect nuclear testing; yet, five years after the treaty entered into force, in January 2001 only three were ready. In October of this year the government voted against the Convention on the Prohibition of the Use of Nuclear Weapons at the United Nations. The USA wants to reserve its options. In contrast, Labor believe that we must all strive to completely eliminate nuclear weapons from the world. Labor believe there is no justification for the possession of nuclear weapons. Labor believe there are no circumstances which render their use acceptable. We will continue to urge the Howard government to meet its obligations to the citizens of Australia by working to end the age of nuclear weapons.

The Australian Labor Party will continue to work towards international, multilateral, universal nuclear disarmament. No goal short of that can protect the citizens of Australia or the citizens of the world. However, we do welcome these belated steps by the Howard government to meet Australia’s international obligations in ensuring the security of nuclear facilities and nuclear material. The legislation before the Senate today goes a small distance to meeting Australia’s obligations as a world citizen. In seeking to further safeguard Australia’s nuclear facilities and nuclear resources it can be said, as far as the domestic and non-state actors are concerned, at any rate, to be concerned for non-proliferation.

Australia has a specific responsibility through the International Atomic Energy Agency, the IAEA, to protect information that, in the cases of unintended disclosure, may compromise nuclear materials and fa-
facilities. The government has had nearly four years to align its domestic legislation with the requirements under the 1999 IAEA standard. The fact that the government is doing so only now is of concern. The proposed amendments seek to strengthen the physical security of nuclear material and facilities in Australia in conformity with Australia’s responsibilities as an IAEA member state.

In order, these are the principal amendments under schedule 1. First, proposed section 25A of the safeguards act would make it a criminal offence to breach the duty to ensure the physical security of material and information that could be used for either nuclear weapons or any other device that could produce a nuclear explosion. This relates to the professional responsibilities of staff at Australia’s nuclear facilities. Second, proposed section 26A of the safeguards act would make it a criminal offence to communicate information which could prejudice the physical security of nuclear material or an associated item. The offence would apply to a person who communicated information to someone else in circumstances where the communication could prejudice the physical security of nuclear material or an associated item. Third, proposed section 31A of the safeguards act would make it an offence to enter without authorisation an area to which access is restricted under the act. The area must be clearly signposted to indicate that access is restricted. The offence is one of strict liability, meaning the onus is on the person charged with the offence to establish that there was an honest and reasonable mistake of fact to avoid prosecution.

This amendment bill is broken into three separate schedules. Schedule 1 proposes to create a number of offences surrounding the physical security of nuclear material within Australia. Schedule 2 deals with the Comprehensive Nuclear Test-Ban Treaty Act 1998. It repeals section 2 of the CTBT Act and replaces it with provisions that permit parts of the act to be brought into force at the point when all 44 nuclear declared states ratify the CTBT. Schedule 3 deals with technical amendments to the Chemical Weapons (Prohibition) Act 1994, the Comprehensive Nuclear Test-Ban Treaty Act 1998 and the Nuclear Non-Proliferation (Safeguards) Act 1987 so that each of the acts administered by ASNO, the Australian Safeguards and Non-proliferation Office, consistently applies the same name for the administering office. As it currently stands, each of the acts adopts a separate name for the office which implements each act. As a consequence, each act also adopts a different title for the director of that office. The amendment bill is also intended to allow for the practical naming arrangements under the ASNO umbrella to be referred to by a name or title specified by the minister by gazette.

We see that the general thrust of schedules 2 and 3 are non-problematic in their suggested amendments. We have had some concerns in relation to the impact of the proposed amendments in schedule 1. However, I am pleased that the government has agreed to changes to the Non-Proliferation Legislation Amendment Bill 2003 which address and resolve those concerns we hold about schedule 1. Schedule 1 creates a new class of offences which we accept are intended to protect nuclear material and information that might compromise the security of nuclear material. There is no question that the government must take steps to meet its responsibilities to Australian citizens in terms of their safety and security, but the government must also safeguard the civil liberties and political rights of Australian citizens.

The scope of new section 26A, regarding the proposed offence of communicating information that could prejudice the physical security of nuclear material or associated
items, has been the subject of some concern. When the Senate Foreign Affairs, Defence and Trade Legislation Committee considered this legislation—and I was there for part of that hearing—a number of submissions and witnesses, particularly from non-government organisations concerned with environmental campaigning and consequently antinuclear campaigning, expressed concern that new section 26A could encompass both legitimate protest activity and the acts of whistleblowers. It is obviously critical in any strengthening of the security around our nuclear facilities and nuclear resources that our civil rights as Australians and our democratic traditions which permit peaceful protest are not infringed. It is clearly also vital that persons working within the industry must be able to expose corruption, unsafe work practices and other serious problems if they do in fact exist.

The government has been of the view that, because of the implied inclusion of the principles of recklessness and intent through the application of the Criminal Code as the default mechanism for interpretation, legitimate protest activity and the communication of legitimate protest information would not be at risk of being inadvertently scooped up by new section 26A. However, we in the opposition are of the view that the tests of recklessness and intent must be clear.

We suggested to the government that a note be inserted stating that section 26A is not intended to displace the requirements of recklessness or intention which are defined in division 5 of the Criminal Code Act 1995. This note, I believe, has been inserted into the explanatory memorandum. That will make the inclusion of the principles of recklessness and intent clear rather than merely implied. We also suggested to the government that at the beginning of section 26A(1)(b) the words ‘the person knows that’ be inserted so that the section would then read:

The person knows that the communication could prejudice the physical security of nuclear material, or an associated item, to which Part II applies.

Again, this change will clarify the application of the Criminal Code in these cases. We are pleased that the government has accepted our argument and agreed to those changes. They mean that the Non-Proliferation Legislation Amendment Bill 2003 balances the need to protect Australia’s nuclear facilities and nuclear resources with the need to protect Australia’s democratic heritage of legitimate and robust protest activity.

Of course we must be mindful that the security of Australian facilities is only one small part of the challenge of non-proliferation. We look to the Korean peninsula, the Indian subcontinent and prospectively to Iran as well. Responsible governments around the world must rise to meet the foreign policy challenges posed by these flashpoints. Responsible governments must also rise to the challenge of international proliferation of weapons of mass destruction at a time of international tension.

Nuclear weapons control and nuclear weapons non-proliferation are crucial to regional and global security. Labor governments have a proud history of providing strong leadership on these questions. I urge the Howard government to stop being strong only on rhetoric but weak on action and implementation. I urge the Howard government to confront the policy challenges posed by the possession of weapons of mass destruction by many nations, some of them our allies, throughout the world.

The uncertain security climate Australia and indeed the world face today make the non-proliferation of nuclear weapons and indeed of all weapons of mass destruction a
fundamental part of our quest for long-term global peace and security. While these amendments to the safeguards act are welcome and overdue and, with Labor’s changes, the bill balances security and liberty, we call on the Howard government to go further and meet all of its obligations to protect the Australian people. Non-proliferation is not merely a domestic agenda. Our security cannot be sought in isolation from the world. I commend the bill to the Senate.

Senator ALLISON (Victoria) (11.39 a.m.)—The Democrats have opposed the use and the development of nuclear materials and facilities for non-medical purposes in Australia for a very long time. We are strong supporters of international efforts to prevent the proliferation and testing of nuclear weapons and indeed of the need to see nuclear weapons eliminated entirely. Nuclear weapons are immoral and illegal weapons of mass destruction.

The Democrats are acutely aware of the importance of the Comprehensive Nuclear Test Ban Treaty—CTBT—the Fissile Material Cut-Off Treaty, the Treaty on the Non-Proliferation of Nuclear Weapons, the agreement between Australia and the International Atomic Energy Agency for application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, and the efforts to control the use and development of nuclear weapons. We are also conscious of the role the Nuclear Non-Proliferation (Safeguards) Act 1987 plays in protecting nuclear materials and facilities and implementing non-proliferation safeguards in Australia. These international agreements and the NNPS Act have so far played a very important role in controlling the spread and testing of nuclear weapons.

It is, however, a great pity that this government has not been able to do more to push the nuclear weapons states to disarm, particularly the United States, who this week passed legislation and a $400 billion or so budget that will actually see the development of new nuclear weapons. Like this bill, it is being done in the name of the threat of terrorism. The United States has refused to sign the CTBT and ratify the NPT, and our government refuses to publicly criticise the US for not doing so. Instead of putting up a bill that wants to restrict the rights of protestors, we think our government should be getting together with the New Agenda Coalition and supporting its resolution that says:

... that nuclear non-proliferation and nuclear disarmament are mutually reinforcing processes and that a fundamental pre-requisite for promoting nuclear non-proliferation is continuous irreversible progress in nuclear arms reductions ...

But the government does not, because it is easier for it to pretend that it is using its influence on nuclear weapons states, particularly the US, through polite diplomatic gestures and joining them in what has been an illegal war against Iraq. Our government keeps saying that the NAC—the New Agenda Coalition—resolutions are unrealistic. In other words, Australia has given in on what in the early 1990s were very strong convictions and a willingness to push nuclear weapons states to disarm. I quote Mr Gareth Evans, who argued that the nuclear weapons states should:

... within a reasonable time frame take systematic action to eliminate completely all nuclear weapons.

At the United Nations First Committee on Disarmament and International Security meeting this month, Australia’s representative said:

It is simply not possible to conceive of a world free of nuclear weapons in the absence of complete and permanent assurances of nuclear non-proliferation.
This is simply playing the nuclear weapons state game of chicken and egg. In other words, we will not disarm—in fact, we will build our capacity—as long as other countries like Korea and Iran threaten to take up nuclear weapons. Mohamed ElBaradei, Director-General of the International Atomic Energy Agency, said in September this year:

Unless we are moving steadily toward nuclear disarmament, I'm afraid that the alternative is that we'll have scores of countries with nuclear weapons and that's an absolute recipe for self-destruction.

The government claims that the Non-Proliferation Legislation Amendment Bill 2003 is designed to improve the arrangements for the application of non-proliferation safeguards and protection of nuclear materials and facilities. In this regard, the explanatory memorandum for the bill states:

The Non-Proliferation Legislation Amendment Bill (Bill) strengthens Australia's arrangements for the protection of, and application of non-proliferation safeguards to, nuclear material, facilities and associated information. It will enable Australia to bring into force legislation banning nuclear weapon tests ahead of entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT). It provides also for machinery changes to improve the application of non-proliferation measures.

As a general principle, the Democrats are extremely supportive of moves to improve the domestic arrangements for the protection of nuclear materials and facilities and information concerning nuclear materials and facilities. Indeed, we would like to see the phase-out of all non-medical uses of nuclear material and the closure of Australia’s nuclear mines. Our nuclear facilities pose an unacceptable risk to public health and the environment. They also pose an inequitable burden on future generations.

The recent incident involving the French immigrant is a stark reminder of the threat that our existing nuclear facilities pose to community safety. Furthermore, it is unacceptable that Australia mines and exports uranium that can be used to create similar problems in other countries. However, if Australia is going to have nuclear facilities, the Australian Democrats are supportive of measures to ensure their safety. Yet, in seeking to ensure greater protection for nuclear materials and facilities and in responding to the increased risk of terrorism, we think that the government is targeting the wrong groups and violating democratic values that form the bedrock of Australian society.

There are several provisions in this bill that infringe upon those values. These provisions relate to the protection of associated technology, the communication of information that could prejudice the physical security of nuclear materials or associated items and trespassing on property that contains nuclear materials or associated items. Apart from these provisions, which are contained in schedule 1, the bill will improve the existing arrangements for the regulation and control of the use and development of nuclear materials and facilities in Australia. We support the inclusion of a requirement to obtain a permit to establish a nuclear facility, a facility for carrying out nuclear activities or a facility for the use of associated equipment. We strongly support the amendment in this bill of the Comprehensive Nuclear Test-Ban Treaty Act 1998 to enable the proclamation of key provisions of the act prior to the CTBT coming into force.

Before briefly discussing the provisions of the bill that should be excluded, I wish to note the appalling lack of public consultation that has occurred in relation to this bill. It is an issue that was brought out in the Democrat initiated Senate committee inquiry into the bill. The government seems willing to engage in consultation when it intends to introduce laws that would affect a particular
industry, but not when it proposes to severely curtail democratic rights. Clearly, one of the primary aims of this bill is to restrict protest activities that highlight the government’s failure to address important environmental issues concerning Australia’s nuclear policies. However, not one environment group was consulted prior to the tabling of the bill in the parliament; nor were any Indigenous groups consulted who might have had concerns about nuclear or uranium issues. We think this is unacceptable.

I will turn to the provisions of the bill that we oppose. The most important of these are found in schedule 1, items 21, 26 and 45. They are proposed sections 25A, 26A and 31A. Firstly, proposed section 25A will create an offence for failing to ensure the security of associated technology—which, broadly, is a document containing information that is applicable to the design or production of a nuclear weapon. We think there are three problems with this provision. Firstly, it could result in the imposition of criminal liability in unreasonable circumstances because it focuses on the failure to ‘ensure the physical security of the associated technology’ rather than the deliberate communication of information.

Secondly, this provision will provide a clamp on whistleblowers. There is a need for restrictions on the disclosure of information that could expose nuclear facilities to attack or that could lead to the construction of a bomb. However, there must also be appropriate channels for employees who work in these facilities to report problems, particularly where those problems have a bearing on public safety. At present, these channels do not exist and this provision will serve to further intimidate people who are thinking of disclosing information for legitimate purposes.

Thirdly, section 26 of the act already contains sufficient restrictions on the disclosure of associated technology. However, section 26 contains two safeguards to prevent it from applying in inappropriate circumstances; namely, it applies only to the communication of information, as opposed to conduct associated with the failure to ensure the physical security of something, and it contains a reasonable excuse defence. Proposed section 25A goes beyond these, and there is no reasonable excuse defence at all.

Proposed section 26A suffers from a similar flaw, only the problems with this section are even worse than those associated with proposed section 25A. This section provides:

(1) A person commits an offence if:
(a) the person communicates information to someone else; and
(b) the communication could prejudice the physical security of nuclear material, or an associated item, to which Part II applies.

This provision is ridiculously broad and appears to be specifically designed to curtail the activities of protesters and other citizens who are opposed to this government’s policies on nuclear material.

There are four points to make about this. Firstly, as stated earlier, section 26 already provides an adequate safeguard against the disclosure of information that could be used to make a bomb or for other terrorist purposes. Secondly, there are adequate laws, including section 26, that cover the situation where a person discloses information concerning the physical location or the security of nuclear materials. For example, if a person discloses information to terrorists about the location of materials at Lucas Heights that could be used to make a bomb then they would be guilty of either conspiring to or being complicit in committing a terrorist act.
Thirdly, owing to the breadth of the definitions of ‘nuclear material’ and ‘associated item’, it is likely that this provision will apply to a wide range of activities associated with nuclear issues. However, many of these activities have no bearing whatsoever on national security and are not in any way related to materials that could be used to make a bomb. For example, it will apply to uranium mining and milling. How on earth could disclosing information about uranium mining have a direct bearing on national security? A person would need a reactor and an advanced laboratory to enrich material from the mine to a point where it could be used in a bomb.

Fourthly, this provision is appallingly drafted and leaves far too much scope for the imposition of criminal liability in inappropriate circumstances. The most striking example of this is the phrase ‘could prejudice the physical security of nuclear material’. What does that mean? Again, the operation of the Criminal Code would assist in reducing the chances of a person being convicted of an offence in an inappropriate circumstance. However, owing to the problems discussed earlier, it will not eliminate them. A protester who discloses details of a uranium mine could still be placed behind bars under this provision.

The final provision we oppose is proposed section 31, which creates an offence of entering into an area or onto a vessel that is marked as a restricted area. As with proposed sections 25A and 26A, there does not appear to be any valid reason for the enactment of this provision. There are already sufficient laws that prevent the unauthorised entry onto Commonwealth land containing nuclear materials that could be used to make a bomb. For example, a person who entered the Lucas Heights facility without appropriate authorisation is likely to be guilty of breaching section 89 of the Crimes Act 1914, which prohibits unauthorised entry onto prohibited Commonwealth land. There are also satisfactory laws to capture circumstances where a person enters a property with the intention of obtaining nuclear materials for use in a nuclear weapon, or to sabotage a nuclear facility or to hijack or sabotage a vehicle, aircraft or ship containing nuclear materials. For example, a person who enters a ship carrying nuclear materials with the intention of stealing that material or blowing it up could be guilty of breaching the Nuclear Non-Proliferation (Safeguards) Act, the Crimes (Ships and Fixed Platforms) Act 1992, the Criminal Code Act 1995, and numerous other laws of the states and territories.

So if there are already sufficient laws to ensure the safety of nuclear materials that are a genuine security risk, we would ask what is the purpose of this provision. The only plausible answer is that it is aimed at ensuring the capacity for protesters who enter uranium mines or who climb on vehicles carrying radioactive waste to be convicted of breaching a Commonwealth law and to hurl them behind bars. At present, protesters who trespass on uranium mines or on vehicles carrying radioactive waste are usually only able to be prosecuted under state laws rather than Commonwealth. It must also be emphasised that civil remedies are available in these circumstances to protect the rights of the owner and operator of the mine or the vehicle. This provision will ensure that there is a broad Commonwealth offence under which to capture a wide range of protesters who engage in rigorous protests.

This is not about national security or about real security risk; it is about intimidating protesters. I must emphasise at this point that the Democrats do not support illegal protest activities. Protesters have an obliga-
tion to abide by the laws when expressing their opinions and opposing nuclear activities. However, a protester who thoughtlessly engages in an illegal activity that has no bearing on community safety or national security should not be imprisoned. There is nothing to be gained by doing this, other than to stymie public debate and to destroy the life of the protester.

If the government were really serious about protecting the Australian public and the environment from the effects of radioactive materials, it would close Lucas Heights and shut down our uranium mines. Accepting that the government is not willing to do this, a step in the right direction would be to ensure that the Commonwealth cannot stand over the states and territories and force them to accept Commonwealth nuclear facilities in their jurisdiction without their consent. As we saw with the proposal to establish a dump in South Australia, the willingness of the Commonwealth to force nuclear facilities on a state can lead to considerable conflict. In turn, this leads to wasted resources and inappropriate planning. A more appropriate procedure would be to ensure that the Commonwealth has the consent of the relevant state or territory before they decide to place a nuclear facility in their backyard.

States and territories should also be required to give their consent before the Commonwealth decides to transport radioactive waste through their jurisdiction. Furthermore, the states and territories should also be permitted to subject Commonwealth activities concerning nuclear facilities to state and territory environment and planning laws. This would reduce conflict, enable a more orderly planning process and better guarantee environmental and public safety outcomes.

Accordingly, the Democrats will be moving amendments to this bill that do three things. Firstly, they will prevent the construction and operation of a controlled facility, which includes a nuclear reactor and a nuclear waste dump, by the Commonwealth or a Commonwealth contractor in a state or self-governing territory without the written consent of the relevant state or territory. Secondly, they will prevent the transportation of a controlled material, which includes nuclear waste or controlled apparatus, into or through a state or self-governing territory without the written consent of that state or territory. Thirdly, they will repeal section 83 of the ARPANS Act, which currently excludes the operation of prescribed state laws to activities authorised under the act. We firmly believe that these amendments will make a valuable contribution to improving the regulation of nuclear facilities.

Senator NETTLE (New South Wales) (11.57 a.m.)—The Non-Proliferation Legislation Amendment Bill 2003 seeks to amend two different acts: (1) the Nuclear Non-Proliferation (Safeguards) Act and (2) the Comprehensive Nuclear Test-Ban Treaty Act. In a strategy that is becoming commonplace for the Howard government, the parliament is being placed in the vexed position of having to accept objectionable measures in order to ensure the passage of important measures that have cross-party support. Neither the government nor its officials have advanced any policy reason for linking domestic and international issues in this bill. The Greens object to the government tying widely supported measures to implement the comprehensive test ban treaty in Australian law with security measures that have serious implications for civil liberties. This political tactic undermines the parliament’s ability to legislate widely supported measures by linking them to excessive security measures that fail to guarantee proper protection for citizens’ rights.
The Greens believe it is time for the government to end this negative, divisive and counterproductive approach to law-making and to abandon its apparent preparedness to trample all over legitimate civil and political rights of Australians in an ill-conceived campaign for political advantage. The Greens support the measures in this bill to implement the goals of the comprehensive test ban treaty, and we oppose the measures that hinder the right to campaign and protest about nuclear matters in Australia, including the disclosure of material by whistleblowers. For this reason, I will be moving an amendment to split the bill so that the Senate can support the test ban treaty clauses and refer the other matters to a thorough public inquiry.

The Greens support schedules 2 and 3 of this bill, which give effect to Australia’s international undertakings to support the comprehensive test ban treaty. The Greens oppose the possession of nuclear weapons and the testing of them. Such weapons serve to make our world insecure—not the reverse, which is often claimed by those nations that hold or seek to procure such weapons. We only need to look to the tensions that have emerged recently with North Korea, which aspires to become a nuclear power, or to the illegal war on Iraq, fought supposedly in search of weapons of mass destruction, to see how detrimental to the security and peace of all peoples is the procurement of weapons that have the capacity to kill on such a grand scale. Testing of nuclear weapons is unnecessary unless there is a desire to leave open the option of using these nuclear weapons. Testing therefore contributes to insecurity, as well as causing grave environmental damage and risks to the health of people, yet the United States Senate has still not ratified the comprehensive test ban treaty and the US President, George Bush, has publicly opposed the treaty, even hinting that the United States may resume testing in defiance of the will of the international community and its own moratorium that has been in place for a decade.

The Bush administration’s obstinacy on this issue has already had repercussions, with China and Iran withdrawing their involvement in monitoring nuclear tests in protest against the actions of the United States. The funds spent on producing and testing nuclear weapons could be far better employed in addressing a whole range of different issues—poverty, illiteracy, preventing illness and disease, and homelessness and hunger. There is no shortage of worthwhile recipients of the billions of dollars that the world wastes each year on the armaments race.

As a party founded on the principles of peace and non-violence, the Greens are happy to support schedules 2 and 3 of this bill. However, we are concerned about a number of provisions in schedule 1. We believe they strike the wrong balance between protecting the public and the environment from threats against nuclear material and installations and the legitimate right of free speech—in this case, to campaign against the
nuclear industry—and the role of whistle-blowers, who disclose vital information to the public about the industry.

Schedule 1 of the bill creates new offences under the Nuclear Non-Proliferation (Safety) Act, including a penalty of two years imprisonment for communicating information which prejudices the physical security of nuclear material and/or associated items. Mr Leask, the Assistant Secretary to the Australian Safeguards and Non-Proliferation Office of the Department of Foreign Affairs, told the committee during the two-hour inquiry:

An example of prejudicing the physical security of transport would be revelation of the route, the timing and the type and nature of the vehicle—to anyone not authorised to receive that information. I will get to that matter a little later on. Another offence that is contained in schedule 1, for which there is a penalty of six months imprisonment, is that of entering without authorisation an area where nuclear material or associated items are stored or transported. This provision includes a reversal of the burden of proof so that the onus is on the person charged to establish that they should not be charged with the offence rather than our traditional innocent until proven guilty principle. The bill authorises Protective Service officers to arrest without warrant a person whom they suspect of having committed one of these offences. Such proposals are reminiscent of the ASIO legislation that we debated in this chamber a year ago now. More specifically, they are also reminiscent of antiterrorism legislation introduced by Bob Carr in my state of New South Wales, which allows for arrest without warrant.

These proposed new offences have profound consequences for the right to protest and the public right to know about nuclear matters. The government says that these measures are designed to strengthen Australia’s arrangements for the protection of nuclear facilities, material and related information so that terrorists cannot have access to them. Clearly, it would be of grave concern were such information or material to fall into the hands of anyone intent on using it to terrorise the community, but I suspect that the six months imprisonment that relates to this offence is a very different approach than we have from this government in relation to terrorism issues. That begs the question about whether this is the true intention behind this legislation.

The Greens are concerned that the wide definitions used in the new offences that this bill creates fail to make provision for legitimate protest activity and exposure of unsafe practices in the nuclear industry. We have seen the government adopt this approach before with the ASIO legislation, evoking security threats as a justification for unreasonable intrusion on well-established civil liberties and human rights such as innocent until proven guilty. The experience of the ASIO legislation reminds the Greens, and should remind this parliament, that we need to be vigilant in the face of a government prepared to exploit genuine concerns about security for its own political purposes. It is not a requirement under this legislation that a person communicating information intends the information to prejudice the physical security of the nuclear material or associated items.

Greenpeace Australia Pacific and the Australian Conservation Foundation have expressed concern about the wide ambit of these provisions, in particular their potential to unreasonably constrain the right to protest and impose heavy punishment on those people who make information available to the public. At the committee hearings, Mr Leask told the committee that whistleblowers raising safety issues ‘should not be caught by the new offences’. Nor would the bill have any impact on what he described as ‘lawful, le-
gitimate protest’. But, in further evidence, it became apparent that the offences are designed to curtail protest activity and that they could curtail exposure of information that the public has the right to know. I go back to the comment that Mr Leask made earlier about an example being the revelation of the route. Another example: if someone were to reveal details about poor security arrangements at the Lucas Heights site, they could be imprisoned under the provisions of the bill. This came out in the *Hansard* of that committee inquiry as well.

Antinuclear campaigners and local governments are currently engaged, with state governments as well, in a campaign against the transportation of nuclear waste from Lucas Heights in southern Sydney across the state to the site of a proposed nuclear waste dump in South Australia, where there is also a strong campaign against the waste dump. The campaign around the transportation of this material includes publicising the possible routes of trucks conveying radioactive waste. The Department of Foreign Affairs and Trade in the public inquiry on this bill said that revelation of the route of nuclear waste would not be caught by this bill, but the transport of spent fuel would. Both these items are transported through communities in New South Wales, coming from Lucas Heights, and nuclear campaigners and antinuclear campaigners will not always know which precise items are on which precise truck, especially if information flows are further tightened by restrictive legislation, such as is being proposed today. According to the New South Wales Minister for the Environment, Bob Debus:

... there is an absolute necessity for the community of this State and especially the community along any possible transportation route to be given proper and full information or an opportunity for transparent discussion and the opportunity for political response to such proposals.

Numerous New South Wales local councils have stated their opposition to the transport of nuclear waste through their communities, including Broken Hill, Narromine, Nyngan, Cobar, Dubbo, Cobbon, Orange, Bathurst, Lithgow, Blue Mountains, Gundagai, Hay, Holroyd, Narrandera, Liverpool, Parramatta and Campbelltown. Seventeen mayors along the proposed transport route stated:

Given the failure of the Commonwealth to satisfy the issues of safety of transportation of nuclear waste including wastes from the Lucas Heights reactor, the Group of Mayors oppose the transport of nuclear waste on NSW roads on any route through NSW local government areas ... The mayors noted the ‘failure of the Commonwealth to satisfy the issues of safety of transportation of nuclear waste’ and the ‘failure of the Commonwealth to comprehensively consult local government and communities along the route’. Australians have a right to know that their federal and state governments are facilitating this transportation of hazardous waste through their communities; yet, under this bill, the publication of the route of nuclear material could become an offence under proposed section 26A, punishable by six months imprisonment.

The concerns that the Greens have about the implications for this bill for whistleblowers are not abstract. The Australian Conservation Foundation reminded the committee that, earlier this year, information about significant construction errors that had occurred at the new reactor being built at Lucas Heights were made public by a whistleblower who provided the information to a journalist. The errors concerned the drilling of holes in the wrong place in the reactor’s main tank—the primary safety system. Clearly this had the potential to threaten public health, and the revelation prompted a review by ARPANSA. The recent Senate inquiry into uranium mining in Australia was
also sparked off by revelations from whistle-
blowers who had been engaged in this proc-
ess. Disclosure of information in the public
interest and protests to draw attention to
dangerous practices, such as the transporting
of nuclear material through settled areas, is
as much an essential part of efforts to address
nuclear security as the development and im-
plementation of international treaties.

It is communities of people who live with
the threat of serious injury or death from a
nuclear incident who have a legitimate inter-
est in safety issues. Yet this bill discourages
public scrutiny and debate—activities that
are critical to improving the performance of
Australia’s nuclear and uranium mining in-
dustry. Of course, one of the surest ways to
reduce the threat of terrorists using nuclear
material is not to produce it. But, instead of
ending uranium production in Australia, the
Howard government has given the industry
the green light—apparently unconcerned
about the implications for human and envi-
ronmental health. And, of course, we have
research being conducted in Australia on
ways to enrich uranium at a lower cost. This
work is being undertaken by Silex Systems
Pty Ltd on land leased from the Australian
government at Lucas Heights. Their pur-
ported goal is to make nuclear power produc-
tion cheaper, but the Greens say the world
should abandon nuclear power generation—a
goal that is not only desirable but feasible, as
exemplified by Germany, which has com-
menced a program of closing its reactors.

The work of Silex has been conducted
away from public scrutiny. It became appar-
ent in the committee hearing that the gov-
ernment wants to keep it that way. Mr Leask
referred to Silex in giving an example of as-
sociated items and associated technologies to
which this bill extends the scope of the safe-
guards act. Silex Systems Ltd is a subsidiary
of an Australian publicly listed company,
Sonic Healthcare Ltd, which commenced
work under an agreement with the world’s
largest supplier of enriched uranium, the
United States Enrichment Corporation. That
agreement has since ended, but Silex contin-
ues its work far from public scrutiny.

Enriched uranium is used in nuclear
power plants and to make nuclear weapons.
The Greens and others believe the world
needs neither of these dangerous things.
Silex says that its work is solely directed at
enrichment for nuclear power, but enriched
uranium has the potential, in willing hands,
to be used for nuclear weapons. With this
bill, the government seeks to impose prison
terms on someone exposing unsafe practices
in the nuclear and uranium mining industries,
while it continues to permit experimentation
in a technology that would make a dangerous
material cheaper to produce. The contradic-
tion has not escaped the Greens.

Given our concerns about the bill, we are
proposing that schedule 1 be referred back to
the Senate Legal and Constitutional Affairs
Legislation Committee for a more thorough
examination of the implications of the
changes affecting the right to protest and the
communication of information that is in the
public interest. Our proposal is in accord
with the views of the Labor members who
sat on the first committee, who recom-
manded that the matters in schedule 1 be
dealt with in separate legislation. Labor has
proposed a minor change to one provision,
26A, which I understand the government has
agreed to support. We do not believe that this
change is adequate, and neither did the Labor
members of the committee who looked at
this bill.

We recognise that there are legitimate
concerns about nuclear material falling into
the hands of people who wish to use it for
the purpose of threatening or actually caus-
ing harm. However, we believe that the
amendments in the bill will unreasonably
restrict the right to protest about nuclear matters and the right of the community to know about such matters. Our proposal will not delay the non-contentious segments of this bill, which the Greens wish to support. I move:

Omit all words after “That”, substitute:

“(a) the Senate condemns the Government’s attempts to curtail the right to protest against the nuclear industry and to increase penalties for whistleblowers in the industry; and
(b) given the serious public safety issues raised by this bill, Schedule 1 of the bill is referred to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 3 May 2004.”

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.16 p.m.)—I table a correction to the explanatory memorandum relating to this bill. I know it is not my area of expertise, but I thought I might make a slightly longer speech than simply tabling an amendment to the explanatory memorandum. In Senator Hill’s absence, I am taking this bill through. The Non-Proliferation Legislation Amendment Bill 2003 will strengthen Australia’s efforts to prevent the proliferation of weapons of mass destruction. The bill will amend the Nuclear Non-Proliferation (Safeguards) Act 1987, the Comprehensive Nuclear Test-Ban Treaty Act 1998 and the Chemical Weapons (Prohibition) Act 1994. It enhances domestic arrangements for the protection of Australia’s nuclear facilities, reducing the risk of the proliferation of sensitive materials and information. The bill further underpins Australia’s international, legal and treaty obligations and ensures Australia’s domestic non-proliferation legislation remains at a high standard.

The government is deeply concerned about the spread of weapons of mass destruction, associated technologies and know-how. It took strong action against the threat of Saddam Hussein’s weapons of mass destruction and is a key participant in the Proliferation Security Initiative. It has sustained Australia’s commitment to the non-proliferation treaties, such as the Treaty on the Non-Proliferation of Nuclear Weapons, the Chemical Weapons Convention and the Comprehensive Nuclear-Test-Ban Treaty. Australia has played a key role in non-proliferation bodies, including the IAEA.

International treaties, export controls and other instruments remain critical to stop the spread of weapons of mass destruction, but the government recognises that further efforts to strengthen domestic protection of proliferation-sensitive materials and information are essential. It is clear that there are few barriers, other than technical and financial ones, to rogue states and groups obtaining WMD related materials and knowledge. Therefore, we must make every effort to deny access to unauthorised persons and protect, to the maximum extent, materials and knowledge which might aid an adversary or place Australians at risk.

The Non-Proliferation Legislation Amendment Bill 2003 improves domestic legislation in three critical areas. Firstly, it strengthens Australia’s arrangements for the protection of nuclear facilities, materials and related information and the arrangements for the application of non-proliferation safeguards to them. Secondly, the bill will give legal effect to Australia’s actions in support of the Comprehensive Nuclear-Test-Ban Treaty—known as the CTBT—ahead of the treaty’s entry into force. The government was instrumental in securing adoption of this treaty by the United Nations General Assembly, having rescued it from the Conference on Disarmament in Geneva, which had failed
to reach consensus. Under the CTBT, Australia has already established 15 of 20 planned nuclear test monitoring stations. Ten of these stations have already been certified—more than in any other country. All 15 are already providing data to the CTBT's International Data Centre in Vienna. Once the bill's amendments to the Comprehensive Nuclear Test-Ban Treaty Act 1998 are in place, the government will bring immediately into effect provisions which ban nuclear testing in Australia and any contribution to testing by an Australian citizen anywhere in the world.

Thirdly, the bill implements changes to the machinery of government, including updating penalties in line with current practice, which will improve the effectiveness of each of the acts affected. The government is conscious of concerns that some new offences listed in the bill, particularly those related to the divulgence of sensitive information and trespass in specified areas, could be applied too broadly. I assure the Senate that this is not the case. The government welcomes the constructive engagement of Labor to further strengthen the bill in this regard. As with all modern legislation, this bill cannot be interpreted without the application of the Criminal Code—that is, part of the Criminal Code Act 1995, which, inter alia, seeks to ensure that criminal offence provisions are constructed, interpreted and enforced in a uniform way by the Commonwealth. The bill's criminal offence provisions are focussed, and there is an appropriately high burden of proof required for successful prosecution.

I note that concern has been expressed that this bill will limit the rights of whistleblowers. The relevant proposed section, 26A, is focused on the protection of information which could compromise security arrangements which are clearly vital for the protection of nuclear facilities, materials and the public. The bill does not impact on the right of whistleblowers to report concerns relating to nuclear safety or the management of radioactive sources, which are the regulatory responsibility of state governments and the Australian Radiation Protection and Nuclear Safety Agency. Clearly, however, the communication of specific details about security arrangements that could be used to defeat those security arrangements would not be in the public interest. Most people recognise that it would be irresponsible and a possible danger to public safety for a person to publish specific and vital details about security arrangements.

Another concern that has been raised is that the provisions within the bill that deal with unauthorised access to restricted areas could curtail the right of legitimate protest—section 31A. That is not the case. The bill does not limit further the right of protest, as areas likely to be designated under this section are already off-limits to protesters and must be well-defined and clearly marked. However, the bill recognises that some parts of a nuclear facility and some nuclear materials are particularly sensitive, so it increases the penalty for unlawful entry into these sensitive areas, which are designated by a permit requirement. In the government's view, it is essential to ensure that nuclear materials are properly protected against theft, sabotage and terrorist acts. Responsible persons will recognise that their actions should not endanger public or personal safety. There are some places to which access must be tightly controlled.

The government accepts the amendments proposed by Labor. However, the amendments to the bill proposed by the Democrats are unacceptable. First of all, they gut the bill of its real security strengthening measures, leaving essential administrative changes only. Secondly, the proposed amendments listed as 'Schedule 4—Transportation of radioactive waste' are likely to interfere with the Commonwealth's responsibilities and
operations. In any case, these proposed amendments are unrelated to the purpose of this bill, which deals with the vital issue of non-proliferation. Similarly, the government rejects the frivolous amendment proposed by the Greens, noting that the bill has already been considered by the Senate Foreign Affairs, Defence and Trade Legislation Committee, and that that committee recommended that the bill should be passed by the Senate in its current form.

The government is firm on this issue. The bill will strengthen Australia’s efforts to prevent the proliferation of weapons of mass destruction. To this end, all its provisions are necessary and reasonable. It will contribute to efforts to minimise the risk that rogue states or terrorists might access proliferation-sensitive material or information. The bill will do so without impinging on the reasonable rights of all—in particular, the rights of all Australians to freedom of expression and legal protest. The bill is not intended to capture peaceful protests which in the past have been lawful. But governments have a duty to ensure that domestic regulatory frameworks are effective in deterring and meeting possible threats. The Non-Proliferation Legislation Amendment Bill will strengthen Australia’s protection of proliferation-sensitive material and information. Accordingly, I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Cherry)—The question is that the amendment moved by Senator Nettle be agreed to.

A division having been called and the bells having been rung—

Senator Hogg—Mr President, can I suggest that the bells be rung for one minute more? There seems to have been a problem with the timing.

The PRESIDENT—Yes. Ring the bells for one more minute.
These amendments are to do with breach of duty to ensure security of associated technology—schedule 1, items 21 and 22 in proposed section 25A. There are three main problems with proposed section 25A. Firstly, it could result in the imposition of criminal liability in unreasonable circumstances because it focuses on the failure to ‘ensure the physical security of … associated technology’, rather than the deliberate communication of information. Owing to the operation of the Criminal Code, the question a court will ask when interpreting this provision is whether the relevant person knowingly, intentionally, recklessly or negligently failed to ensure the physical security of the associated technology. Consequently, there is the possibility a person could be prosecuted for negligently leaving a secure document in a public place, or for negligently failing to lock a door while leaving from work. These appear to be unlikely circumstances. However, if history has told us one thing, it is that the unlikely sometimes eventuates.

Secondly, this provision will provide a clamp on whistleblowers. There is an obvious need to limit the public dissemination of information concerning facilities that contain materials that can be used to make explosives. However, there must also be appropriate channels for employees who work in these facilities to report problems, particularly where those problems have a bearing on public safety. At present, these channels do not exist, and this provision will serve to further intimidate people who are thinking of disclosing information for legitimate purposes.

Thirdly, section 26 of the bill already contains sufficient restrictions on the disclosure of ‘associated technology’. The two main differences between proposed section 25A and 26 are that (a) section 26 only applies to the communication of information and (b) section 26 contains a ‘reasonable excuse’ defence. Proposed section 25A goes beyond these and there is no ‘reasonable excuse’ defence. Consequently, Democrat amendments (1) and (2) will remove proposed section 25A.

Senator CHRIS EVANS (Western Australia) (12.36 p.m.)—Labor will be supporting the bill as is and opposing the amendments of the Democrats. I would like to outline the reasons why. I think it is clear from the committee inquiry that all opposition and minor party senators who took an interest in it were concerned about the effect the bill might have on legitimate protest and whistleblowers. I was only there for part of the hearing, but I know that Senator Cook shares that view. We were keen to examine the concerns raised by NGOs, such as the Australian Conservation Foundation and Greenpeace et cetera, regarding proposed section 26A.

We were minded to take their concerns as to what the impact might be on legitimate protest and whistleblowers seriously, and I think all non-government senators have been engaged in trying to make sure that the very legitimate objectives of the bill are supported while dealing with any such concerns. It is fair to say that there have been three different ways of dealing with that. The approach of the Greens was to seek to have the bill split and referred back to the committee, because they wanted more time for consideration, debate and examination of the issues that were thrown up. We had some initial sympathy for this approach, but on balance we decided that we ought to support the bill because of the other urgent and important aspects of it.

The approach of the Democrats has been to seek to allay their concerns through a series of amendments, of which this is the first. I will take this opportunity to lay out Labor’s
position now rather than do it on each occasion. We do not support the approach of the Democrats. Since the hearing, Labor have sought to negotiate an amendment with the government which allays our concerns and the concerns that were put to the committee. We have sought legal advice and have worked through those issues in an attempt to balance the very important objectives of this bill, which are to provide greater security of nuclear material and associated items while ensuring legitimate protest and the proper actions of whistleblowers are protected. Labor will be supporting our own amendment as the solution to that problem and, therefore, will not be supporting the alternative approach the Democrats have taken.

That is an outline of where we find ourselves. I think we all share the concern raised of making sure we have adequate protections. Obviously, I will speak at greater length when we get to the Labor amendment as to why we think that is the preferred option. I also want to acknowledge that the government has amended the explanatory memorandum, as I indicated in my speech in the second reading debate. We thought that was helpful in making clear that proposed section 26A is not intended to displace the requirements of recklessness or intention, which are defined in division 5 of the Criminal Code.

We appreciate that the government has now done that, and we acknowledge that it will be helpful. But, as I say, the key issue is the approach to dealing with the concerns of ensuring that this bill does not prevent legitimate protest activity or the legitimate activity of bona fide whistleblowers. We think our amendment provides that sort of protection. The government has indicated it is prepared to support that amendment, and that is the approach we will be taking. Therefore, we will not be supporting the Democrat amendments, just as we did not support the Greens second reading amendment. We share the concern of non-government senators in ensuring the bill provides proper protection. With the government indicating its support for our amendment, we think we will deliver that. But the Labor party will not be supporting the Democrat amendments.

Senator Nettle (New South Wales) (12.41 p.m.)—I would like to ask the minister whether this particular part of the legislation is to extend the provisions to associated technology that is being used. During the committee inquiry into this bill the officials from the Department of Foreign Affairs and Trade talked about Silex technology as being an example of that associated technology which this provision of the bill would cover. I am wondering whether the minister could outline for us the Silex technology that is in place at Lucas Heights, to which these amendments of the Democrats pertain.

Senator Patterson (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.42 p.m.)—I will start by saying that the government will not be supporting these amendments. The second reading speech explained why the government will not be supporting these amendments. The second reading speech explained why the government will not be supporting them. There have been some recent statements that the government has a hidden agenda contrary to its nuclear non-proliferation obligations, and they are entirely false. Silex Systems Ltd is a publicly listed company; there is no government ownership of it. Uranium enrichment research is funded entirely by the private sector. I am advised that the sole aim of Silex has always and only been for low, enriched uranium for nuclear power. Silex is restricted to laboratory scale research and does not involve an enrichment plant. The technology is classified accordingly. Information about all the company’s activities is publicly available and would not be curtailed by the Non-
Senator NETTLE (New South Wales) (12.43 p.m.)—Perhaps the minister could explain whether the Silex research project is about making uranium enrichment cheaper.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.44 p.m.)—Silex, as I said, is restricted to laboratory scale research and does not involve an enrichment plant. Whether or not it makes uranium cheaper is not information I have here. But, as I have been advised, it is restricted to laboratory scale research.

Senator NETTLE (New South Wales) (12.44 p.m.)—I thank the minister. I think the chamber understands the point that it is research into uranium enrichment and it is about the technology of how to enrich uranium. The question relates to whether Silex, the private company doing this research into the technology for uranium enrichment, has as its intention with this project that is being carried out at Lucas Heights to make the process for enriching uranium cheaper.

Senator BROWN (Tasmania) (12.45 p.m.)—The question to the minister was: is the Silex process intended to make uranium enrichment cheaper? That question warrants an answer. I will add a couple more questions. How many people are working on the Silex experimentation at Lucas Heights? What is the American connection, in terms of investment or interest, in this technology and who has that interest from the United States?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.45 p.m.)—I answered Senator Nettle’s question as best I could. It is a private company and I do not have that information available here.

Senator BROWN (Tasmania) (12.46 p.m.)—The minister should have that information available. If she is across this legislation, it ought to be available. It is important for the committee to be able to make a considered judgment on the whole of what is going on at Lucas Heights, including the need to transfer waste away from it and other matters. It is the proper time to discuss Silex—which, I inform the minister, is about laser technology to enrich uranium at a fraction of the cost of enriching uranium for use in nuclear power stations and, ipso facto, the production of nuclear weapons further down the line. There is great alarm about this because where you make such technology cheaper you make it more widely available further down the line—including to terrorists.

We are debating legislation here that the government says is essential to keep us safe. But, when you take the global viewpoint, there is experimentation going on at Lucas Heights by Silex, a private entity, without the government being able to inform the committee about that experimentation, let alone the threat to the safety of not just the locality but further on to the whole world, because if anything is going to make nuclear weapons available to terrorists in the future it will be cheapness and ease of technology. I would like the minister to be able to inform the committee what concerns the government has about a process that leads to cheaper uranium enrichment and potentially to cheaper availability of both nuclear power and nuclear weapons.

If I am wrong about that, then the minister should be able to say so. It is a matter of extraordinary importance: nuclear weaponry and the prevention of its expansion is at the top of the agenda of George W. Bush, and therefore of the Prime Minister, the Hon. John W. Howard. How on earth do you have faith in the extraordinary profile and effort...
being put into keeping the world safe if there
is experimentation going on in Sydney which
is potentially going to do the exact opposite
and make the proliferation of nuclear weap-
ons outside of governments into the hands of
people with much less financial where-
withal?

If we are looking here at how to secure the
future, we have to look at whether Silex
should be proceeding in the way it is without
safeguards that the minister can assure this
house have been put into place by the federal
government. It is not good enough just to say
it is in private hands—in fact, that increases
the worry. It is the minister’s responsibility
to assure this committee that the government
knows what is going on as far as Silex ex-
perimentation is concerned and that that
technology does not have the potential to
reduce the safety of the world against nuclear
weapons in the future in the way I have just
outlined.

Senator PATTERSON (Victoria—
Minister for Family and Community Ser-
vices and Minister Assisting the Prime Min-
ister for the Status of Women) (12.49
p.m.)—The Silex project is, as I said before,
for the production of low-enriched uranium
which may have commercial applications for
electricity generation. The Australian Safe-
guards and Non-Proliferation Office, the
ASNO, monitors the project to ensure Aus-
tralia’s non-proliferation commitments are
met. The project is still in the research and
development phase and the government is
satisfied there is sufficient monitoring to en-
sure that Australia’s non-proliferation com-
mittments are met. I have nothing more to
add, and we will not be supporting the
amendments.

Senator BROWN (Tasmania) (12.50
p.m.)—If the Australian government is moni-
toring the project, surely the minister can
outline exactly what is going on there. That
is pretty self-evident. Saying that she has
nothing more to add is failing to give this
committee information that has been re-
quested. That is a failure of the minister to do
her job, let alone of the committee to be in-
formed in a proper way on a very, very im-
portant matter like this. I did also ask the
minister about the United States connection
with the Silex experimentation. If I am not
wrong, there is no nuclear power industry in
Australia. The minister is indicating that this
is experimentation to foster nuclear power
processes. If it is not, what on earth is it for?
The experimentation taking place at Lucas
Heights in Sydney is for export to nuclear
powers. If that is not the case, the minister
should tell us. It is not for use in Australia; it
is for export into the nuclear cycle overseas,
including nuclear power stations and poten-
tially nuclear weapons. Is that not so, Minis-
ter?

Senator NETTLE (New South Wales)
(12.52 p.m.)—In answering Senator Brown’s
question, perhaps the minister could provide
some assistance with the arrangements be-
tween Australia and the United States regard-
ing the Silex technology occurring in Austra-
lia. I understand that a committee has looked
into the issue of treaties that needed to be
signed and agreements for cooperation be-
tween Australia and the United States regard-
ing Silex technology. I also understand that
agreement between Australia and the United
States has ceased and the Silex technology is
continuing. I am wondering whether the min-
ister could explain that for us. Maybe I do
not have all the information. Perhaps, as the
minister, she may be able to assist with that
information.

Senator BROWN (Tasmania) (12.53
p.m.)—We have a sit-in strike going on here!
The minister is glued to her seat and has
gone on an information strike and it is not
the way to help the committee along. She has
advisers. The full gamut of information that
we want is available right here, but she has decided she is not going to give it. They are reasonable questions. It is very germane to the legislation and it is very important that we get some information on the matter. Senator Nettle has just asked about the connection with the United States and it is my understanding too that there was US investment or certainly keenness to foster this experimentation but that has ceased.

This is a private entity working at Lucas Heights, and I have further questions which, of course, are very germane to this matter. Where is the waste, which has already been stored and/or expected to come from this experimentation, going to go to and who is going to pay for it? We need to be assured that this private experimental research and development company is paying all the costs, including the waste disposal costs—and I mean in perpetuity. I would like to know what the contractual arrangement is for the disposal of waste by the Silex company as compared to Lucas Heights as a whole, how that arrangement has been entered into and what the cost is of disposal of waste or storage of waste into the future.

Senator CHIRS EVANS (Western Australia) (12.55 p.m.)—Can I indicate on behalf of the Labor opposition that we would expect the government to be a little more cooperative in the committee stage. Our support for the bill does not deter us from insisting that the chamber be treated appropriately. I think some of Senator Brown’s queries about ownership of the company and its intentions are probably pushing the envelope a little bit in terms of the minister’s responsibilities, but the serious questions which have been asked by both Senator Brown and Senator Nettle about Silex and nuclear waste at Lucas Heights seem to me to be pretty relevant to the topic. I think the Committee of the Whole would be assisted if the government could at least provide as much information as is available to it. Unless we get that, these things tend to get bogged down or the bill gets deferred. I think if the government is serious about the bill it ought to treat the questions seriously. I will at some stage part with Senator Brown because I have no doubt he will seek information that the government does not have or might even try to make some broader points that are not strictly related to the bill. I would not like to cast any aspersions, but on occasions we have all been known to do that.

Senator Brown—There’s always a first time.

Senator CHIRS EVANS—We have all been into that. But I do make the point that the Labor opposition’s view is that the Committee of the Whole ought to be treated seriously and that our attitude to the bill and the handling of the bill is, in part, determined by the government’s cooperation in the committee stage. I think serious, relevant questions ought to be treated appropriately. I make that point for the benefit of perhaps enhancing and progressing the debate.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (12.57 p.m.)—I appreciate Senator Evans’s comments. The bill has been around for quite a long while. We do have a process for putting questions on notice. These are very detailed questions which are peripheral to the bill. I have been advised that it is a publicly listed company. Information is available, and if the Greens are so keen about this I am sure they would have found that information out. I have indicated before that this is a very small research and development project. I believe that there are about 20 staff. I am advised that there is no US company involvement in Silex at this time and that there is a bilateral agreement between Australia and the US to
ensure only peaceful use of silex, if it were ever exploited commercially in the US. I do not have any more information to add. I would suggest that, if you want detailed questions in future in a committee stage of a bill, it may be useful to put those questions to the relevant minister so that material can be prepared; otherwise, we will sit for days in the committee stage of a bill. There was an opportunity before, during the Senate Foreign Affairs, Defence and Trade Committee inquiry into the bill, to have these questions put on notice as well.

Senator NETTLE (New South Wales) (12.59 p.m.)—I thank the minister for the little bit of information that she just gave to the chamber on this issue. Just to explain to the minister, at the committee hearing into this bill—which lasted for two hours, and for which the Greens were present all of that time—the Department of Foreign Affairs and Trade officials who were at the inquiry raised the issue of Silex technologies as an example of associated technologies referred to in the amendments to this bill that we are dealing with.

This is an opportunity now, having had the department raise those issues in the committee inquiry process, to ask questions. I can assure the minister that the Greens will continue to ask questions on this matter, both in the chamber and through other forums that are available to us, because we believe that it is important that the public know about uranium enrichment that is occurring in Australia at facilities such as Lucas Heights for which the Commonwealth government has considerable responsibility.

Senator McGauran—Don’t worry about the medical benefits, will you?

Senator NETTLE—We are concerned about uranium enrichment. Senator McGauran, who has just joined us in the Senate, may not be aware that this is the process by which uranium is used in nuclear weapons. It is uranium enrichment which is being experimented on. The technologies for uranium enrichment at Lucas Heights are what we are speaking about here today, Senator McGauran.

The Greens will continue to raise these issues because we think it is important that the public know about these forms of uranium enrichment. I would have thought, from the minister’s earlier comments about the Department of Foreign Affairs and Trade monitoring this uranium enrichment, that the minister may also be concerned that the public know about the safety of such uranium enrichment projects. I thank Senator Patterson for her offer to answer further questions on this issue. I assure her that the Australian Greens will be taking up that offer because we believe this issue of uranium enrichment—the process by which nuclear weapons are made—is something that the Australian public deserve to know about, especially when it is occurring in places like Lucas Heights in my home town of Sydney. In fact, it is occurring in the middle of my home town of Sydney. We will continue to ask questions on this.

Senator BROWN (Tasmania) (1.01 p.m.)—The one question I would like to put on notice to the minister is the one I last asked, which was about the arrangements for waste disposal from the Silex experimentation and the carrying of the cost by the private entity that is doing this experimentation. I would be very concerned if there had not been such a contractual arrangement entered into. I do not expect the minister to answer it now but I wonder if she would take it on notice and come back to the Senate with that information about waste disposal from this experimentation, how it is going to be achieved, and what the contractual arrangement is for ensuring that Silex takes the full cost of that—not just in the immediate term.
but in the long term, which nuclear waste disposal involves.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.02 p.m.)—As I said before, this is restricted to laboratory scale research. I cannot make a commitment on behalf of another minister but I will refer this part of the Hansard to the relevant minister and he will make the decision about the reply. I do not have the information here but, as I said, it is restricted to laboratory scale research.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that items 21 and 22 of schedule 1 stand as printed.

Question agreed to.

Senator ALLISON (Victoria) (1.03 p.m.)—I withdraw amendment (7), which was consequential on the amendment which has just been voted down.

Senator CHRIS EVANS (Western Australia) (1.03 p.m.)—I move the opposition amendment circulated in Senator Faulkner’s name:

(1) Schedule 1, item 26, page 8 (line 7), before “the communication”, insert “the person knows that”.

As I said both in my speech in the second reading debate and in my remarks about the first amendment moved by the Democrats, I think all non-government senators agree that we need to provide better protection for legitimate protest activity and better protection for legitimate whistleblowers. After a range of discussions and after seeking some legal advice, Labor have come to the view that the amendment we now seek support for will provide that protection. I think the government’s initial response was to argue that the Criminal Code applies as the tool with which to interpret the amendment bill and that, as a result, tests for recklessness, knowledge and intent apply by default. But Labor had reservations as to whether intentionality and recklessness are necessarily assumed tests in the bill as currently drafted, and as the government had claimed, under section 26A.

The principles of recklessness, where the accused would have to know that the information communicated could directly impact on security, and of intention, where the accused would have to deliberately and intentionally communicate the information, are quite critical to the threshold for the prosecution of offences set up by this bill. While we appreciate it is not the intention of this bill to limit legitimate protests we strongly believe that this amendment makes this protection much stronger.

While we are fully supportive of the security aspects of protecting our nuclear facilities and the non-proliferation implications of preventing unlawful access to nuclear material, protest activity in relation to the location and shipment of nuclear material is inevitable in the future, as these matters invariably generate controversy. We have had a long history of protest in these areas, and that is surely likely to continue. It is a legitimate part of our democratic culture and, within legal constraints, it ought to be permitted to occur. We think that under the legislation, as amended by this amendment, a protester will be able to defend a charge on the basis that he or she was not reckless and had no basis for believing that communicating the information could prejudice security, or that it was justifiable to take the risk. If, however, a protester did believe that the communication in question actually endangered the physical security of nuclear material, and this could be proved, it might be said that this is precisely the conduct which ought to be prohibited.
The insertion of the new words will make it explicit that the knowledge of the Criminal Code is imported into the provision. We think this provides the sort of protection that is legitimate and appropriate in a democratic society. We think this amendment will raise the bar and put the onus of proof on the prosecution to prove intentional or reckless activity. We think that protects legitimate protest activity and protects genuine whistleblowers in a way which I think the whole chamber is anxious to ensure occurs.

As I said, it is a different approach to that adopted by the Democrats and the Greens. It is our attempt to try to solve the same genuine concern that was highlighted at the Senate Foreign Affairs, Defence and Trade Legislation Committee inquiry into the bill and that has been expressed by many NGOs. We appreciate the government accepting the amendment. We think that will get the balance right between the need to provide proper security for nuclear related activities and to protect the proper democratic right of our citizens to protest. I commend the amendment to the chamber.

Senator ALLISON (Victoria) (1.08 p.m.)—Whilst being a little reluctant to get stuck into the Labor Party today—I am feeling great sympathy for its current situation—we do have to say that this amendment is a bit of a joke. I think it is an attempt to save face with environment groups, quite frankly. It is a pity that the ALP is not acknowledging that sections 25A, 26A and 31A have absolutely nothing to do with terrorism or the risk to national security, and it ought to be joining us in exposing the government’s lie that it is. Quite frankly, I cannot see many terrorists marching out to the remote corners of the Northern Territory, to Jabiluka or to Ranger, and attempting to steal unprocessed uranium ore. Uranium ore is no security risk. For it to be a risk, you would need to have a reactor and a high-tech laboratory, and of course you would have to have highly specialised staff to do that. So we would have preferred the ALP to oppose those sections, 25A, 26A and 31A, but it is making it clear today that it will not do that.

The Criminal Code ensures that in order to convict a person of a crime the prosecution must be able to establish that the accused had a relevant fault element. That means that the accused must have either intentionally, knowingly, recklessly or negligently committed the relevant physical element. So it is our view that this amendment will not achieve anything more than duplicating what the Criminal Code would already have achieved. It might seem as if there would be a slight improvement to the bill with this amendment, but I cannot say that we can see it. In our view, it is not worthy of support.

Senator BROWN (Tasmania) (1.10 p.m.)—Minister, if people were to get information about a shipment of nuclear material and ring the press to say, ‘We’re going to have a protest about that on site at Lucas Heights tomorrow,’ and if the media ran a morning story about this, would they be liable under the section that is being amended here?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.11 p.m.)—The government will be supporting the amendment, as I indicated in my response to the second reading debate. We are conscious of the concerns that some new offences listed in the bill, particularly those relating to the divulgement of sensitive information and trespass in specified areas, could be applied too broadly. I assure the Senate that this is not the case. I am advised that the outcome of the scenario that Senator Brown just gave...
as an example would be unlikely. The government welcome the constructive engagement of the Labor Party in this process and we believe that their amendment strengthens the bill in this regard.

Senator BROWN (Tasmania) (1.11 p.m.)—To translate that word ‘unlikely’, it means ‘yes’. People are wide open to potential charges under this legislation. If you do not have a minister who gets up and says, ‘No, that’s not the case,’ and gives a reason for it then you know that the people who are involved in the process—as I was explaining—are in fact vulnerable.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.12 p.m.)—I am advised that the offence is tightly focused on persons who communicate information which could prejudice the physical security of nuclear material or an associated item. Information is that which could enable an adversary either to defeat, or to have an increased likelihood of being able to defeat, security arrangements in place.

Senator BROWN (Tasmania) (1.12 p.m.)—Exactly. So a process which leads to a protest which leads to a delay, for example, in the transport of nuclear material prejudices that material. That would be argued very cogently by lawyers in the courts. It is not tightly focused; it is very loose, it is wide open to interpretation and it throws a very wide net. While the crossbench is not going to get support on that, we are at the heart of the matter, which is that this is very loose legislation. It could trap the press, it could trap local government officers and it could certainly trap people in community organisations who get information passed to them. They could, for example, make information public as part of a demonstration against the increasing role of Lucas Heights, as just outlined by the short debate we had on Silex, as a nuclear facility with global connections which concern a lot of people in this age of nuclear proliferation.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.14 p.m.)—Senator Brown is implying that the offence is too broad—I guess that is his complaint—but I think this represents a misunderstanding of how the offence operates. The terms ‘recklessness’ and ‘intention’ apply under the Criminal Code. That significantly raises the bar for successful prosecution. It is not easy to satisfy these threshold elements. This is emphasised further, as I said before, by the opposition’s proposed amendment, which we will be supporting and which strengthens that and makes it much more difficult to meet these threshold elements. I do not have more to add in answer to Senator Brown’s questions but, because the words ‘recklessness’ and ‘intention’ apply under the Criminal Code, it raises the bar for a successful prosecution.

Question agreed to.

Senator ALLISON (Victoria) (1.15 p.m.)—by leave—The Democrats oppose schedule 1, items 26, 27 and 28 in the following terms:

(3) Schedule 1, item 26, page 8 (lines 1 to 18), TO BE OPPOSED.

(4) Schedule 1, item 27, page 8 (lines 19 to 22), TO BE OPPOSED.

(8) Schedule 1, item 72, page 15 (lines 6 to 8), TO BE OPPOSED.

I want to make four points about section 26A. Firstly, owing to the breadth of the definitions of ‘nuclear material’ and ‘associated item’, it is likely that this provision will apply to a wide range of activities associated with nuclear issues. However, many of these activities have no bearing on national secu-
rity and are not in any way related to materials that could be used to make a bomb. For example, the section will apply to uranium mining and milling. How could disclosing information about a uranium mine have a direct bearing on national security? A person would need a reactor and an advanced laboratory to enrich material from the mine to a point where it could be used in a bomb.

Secondly, as stated earlier, section 26 already provides an adequate safeguard against the disclosure of information that could be used to make a bomb or for other terrorist purposes. Thirdly, there are adequate laws, including section 26, that cover the situation where a person discloses information concerning the physical location or security of nuclear materials. For example, if a person disclosed to terrorists information about the location of materials at Lucas Heights that could be used to make a bomb, they would be guilty of either conspiring to commit or being complicit in committing a terrorist act or murder. It is also likely that they would be guilty of contravening section 26 of the act. Finally, we think that this provision is poorly drafted and leaves far too much scope for the imposition of criminal liability in inappropriate circumstances.

Because of those flaws, and the fact that the provision serves no useful purpose other than to restrict public debate and intimidate protestors, the Australian Democrats oppose this provision.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.17 p.m.)—For the reasons I gave earlier when discussing the previous amendment from the Greens, the government will not be supporting these amendments.

Senator BROWN (Tasmania) (1.17 p.m.)—I want to follow up on what Senator Allison said. She made a very important point. What is the ability of the government to make a declaration which would mean that any protest at a uranium mine could lead to serious criminal charges?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.18 p.m.)—I am just going back to one of the answers I gave earlier about breaching the security conditions. I hope senators understand that this is not my area of expertise. There is a requirement for clear signage around areas where somebody would be breaching the security. I do not have anything to add to what I said before. We will not be supporting the amendments.

Senator BROWN (Tasmania) (1.19 p.m.)—I will give an example. I was at a protest with the Mirrar people against the Jabiluka uranium mine. Their protest—not my part in it—led to a successful outcome in the long term. The Mirrar elders led a walk in to the Ranger uranium mine facility, which was well signed as being off limits. Their point of view was that it was their land. What concerns me is that, with this legislation, Yvonne Margarula and other leaders of the Mirrar could have been facing the full weight of penalties in this legislation. I would like the minister to make it clear whether or not that is the case—whether the government is motivated to move in that direction in those circumstances.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.20 p.m.)—Senator Allison said that uranium is of no proliferation concern. Other advice that I have been given is that if somebody were to walk across property it would invoke trespassing rather than the breach of security.
which is implied here. I am not particularly happy with the detail of that answer. I have understood the rest of it, but I am not sure that I totally understand that. I am going to see if I can get some more detail.

**Senator BROWN** *(Tasmania)* *(1.21 p.m.)*—While the minister is doing that, let me say this. Senator Allison has a very valid point here. You can see the concern that this legislation is a vast erosion of the rights of Australians to be able to be involved in peaceful protest against a matter which is of enormous importance to the future of this country and the whole world—the nuclear fuel cycle.

We know from work done by former Democrat senator Norm Sanders, amongst others, that uranium from Australia does get into the nuclear weapons cycle, or has done in the past. It is an ongoing concern that people have. I recognise the difficulty there is with the spectre of terrorism down the line. That has to be dealt with, and dealt with very firmly. But here we have legislation that I think is very open to an enormous trammeling of the rights that people have had in this country to be involved in protesting about not just uranium mines and the nuclear fuel cycle but also the other values that are lost in this process.

The rights of the Mirrar people to their land is a very good example of that; they face court as a result of the trespass I was talking about. This legislation manifestly increases the penalties, with draconian penalties for people who are protesting in that way. I am sure that the committee would like not just to hear guarantees but also to see clear differentiation built into this legislation to safeguard against that.

You have to be careful when you are drawing up legislation that it is clear, that it is explicit and that everybody understands it. I do not think that is the case here, because the political motivation behind the wielding of this legislation could lead to very gross injustices to people in a democratic country who wish to express their point of view in the time honoured way—in a way that has been used to express opposition to the nuclear fuel cycle.

To take another example, what happens to the wharfies in Darwin who have been aboard ships carrying yellowcake if that is deemed to be off-limits? I can see not only the potential for but also the likelihood of that. Would that now, under this legislation, put them at great risk of extended jail sentences?

**Senator PATTERSON** *(Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women)* *(1.24 p.m.)*—Let me correct one thing I said. Senator Allison talked about uranium and in reply I said one when I meant all. Subsection 26A of the bill talks about ‘communication prejudicing security of nuclear material or associated item’. It is not about trespassing; it is about communicating information to somebody else which could prejudice the physical security of the nuclear material or associated item. This is not about somebody walking onto the property and then maybe being charged with trespassing; this bill is not about that. This is about communicating information which would prejudice the security of nuclear material. I think we need to focus on that. That is my answer to Senator Brown’s question.

**Senator BROWN** *(Tasmania)* *(1.25 p.m.)*—I repeat what I said earlier. If somebody gets in the way of a truck carrying nuclear material in this country they will be in a very difficult position when the star QC for the government or the nuclear company gets up and says, ‘That prejudiced the safety of this material.’ Of course they will argue that.
The very fact of delaying a nuclear transport prejudices its safety, one would be able to argue. Is the minister saying that under those circumstances this legislation would not come into play or could not be brought into play? I doubt it.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.26 p.m.)—I am not a lawyer, as Senator Brown is aware, but I presume that if I were to go about interfering with the normal progress of a petrol tanker and preventing it from moving by lying down in front of it on the road there would be some law to stop me doing that. People have rights. I suspect that Senator Brown has been subject to, or is very aware of, laws whereby people do not have a right to stop the free progress of a commercial vehicle—a petrol tanker or whatever it might be. That is not the issue we are talking about in this bill. The issue we are talking about in this bill is communicating information which would prejudice the security of nuclear material or an associated item. As I said, the examples that Senator Brown is giving would fall under other legislation concerning the rights that people have to transport whatever it might be. But if, as subsection 26A says, the person were to communicate information to someone else that would prejudice the physical security of the material or an associated item then this bill would apply.

Senator BROWN (Tasmania) (1.27 p.m.)—Neil Smith, alias Hector the Protector, was recently fined $5,000 and sent to jail in Tasmania for getting up a tree and delaying for 20 minutes one Gunns logging machine aimed at cutting down that tree. To me, that is vastly out of kilter. What I am concerned about is that this legislation does not just stop the passage of information. If you have been informed about the movement of nuclear material. By the very fact of taking part in a protest you must have received and transmitted that information and you would fall foul of this law. That is the problem.

Senator NETTLE (New South Wales) (1.28 p.m.)—I want to ask the minister about this section which talks about information that will prejudice the security of nuclear material. Some of the discussion that occurred during the committee hearings on this bill was about whether somebody alerting a local council, for example, about the route being taken to transport nuclear material through that local council or state area would fall under the jurisdiction of this legislation. I will help the minister by narrowing the question. I am asking not about nuclear waste but about nuclear material. An example may be spent fuel rods which come out of Lucas Heights and often go to one of the ports from where they are transported elsewhere—because that is the decision as to how to deal with this radioactive material. Perhaps the minister could explain whether someone letting a local council know about the transportation of highly radioactive spent fuel through that area would be covered under this legislation.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.30 p.m.)—As I said before, the offence is tightly focused on persons who communicate information which could prejudice the physical security of nuclear material or an associated item. The type of information is that which could enable an adversary either to defeat or to have an increased likelihood of being able to defeat security arrangements in place. Australia is obliged by the various treaty-level agreements to implement the IAEA standard INFRCYNF Circ225/res4 pertaining to the physical protection of nuclear material and
nuclear facilities against sabotage and theft, which includes a confidentiality obligation. As I have said before, the issues of recklessness and intention apply under the Criminal Code and significantly raise the bar for successful prosecution of the sorts of examples that Senator Nettle and Senator Brown are giving.

Senator NETTLE (New South Wales) (1.31 p.m.)—I do not feel that I am getting an answer to this question. Perhaps the minister could explain whether she believes that a local council being told about the transportation of spent fuel through their local area and then informing their constituents prejudices the security of that nuclear material. The proposal that the government is putting forward says there should be two years imprisonment for providing information that prejudices the physical security of that material. If someone tells the council and the council tell the constituents that spent fuel is going to be transported through the local council area, is that perceived—under this legislation—to be prejudicing the physical security of the nuclear material?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.32 p.m.)—I am advised that ANSTO are told in advance of any such movement and they have a responsibility to deal with that information. But, as I said before, the offence described here is tightly focused on persons who communicate information which could prejudice the physical security of nuclear material or an associated item—that is, information which would enable an adversary either to defeat or to have an increased likelihood of being able to defeat security arrangements in place.

Senator NETTLE (New South Wales) (1.33 p.m.)—I thank the minister for restating what is in the bill; I am aware of what is in the bill, as is the Senate. I am asking for an interpretation of what can prejudice the physical security of the nuclear material. I understand the processes, perhaps more so than the minister who is here at the moment, because I have been through this process with the Senate Legal and Constitutional Affairs Legislation Committee and I have been involved with the community groups who are campaigning against the transport of material through particular local council areas. The question that they need answered and that the community groups and the local councils have been asking the Greens about this legislation, is: will it have an impact on them?

Information is produced by local councils to let their citizens know that nuclear material will be transported through that local council area. They do that because they believe the public has a right to know about the transportation of that material. A whole range of local councils and mayors have come out and said, ‘We don’t support the transportation of this material through our area.’ The reason the Greens are asking these questions is that the local councils and the antinuclear campaigners have asked us if this legislation will have an impact on them. So could the minister provide for the Senate an idea of the government’s intentions under this legislation? Does it cover this information and this distribution of information by local councillors and by antinuclear campaigners about the transport of material through their areas?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.34 p.m.)—I think I will have used up all my resources by the end of this, so I am just alerting honourable senators that we have most probably got to the end of the debate—or, at least, the end of my participation in this section—because
I will just keep saying the same thing over and over. Nobody here can ever predict how a court will interpret legislation. Sometimes when I see us writing amendments at five to three at the end of a session I think it must be quite difficult for the people who pore over what we actually meant, but that has not been done in this case.

In applying section 5.6 of the Criminal Code, the prosecution would have to prove beyond a reasonable doubt that the person intended to communicate information to someone else and that that person was reckless as to whether the communication could prejudice the physical security of the material. As I have said before, the definitions of ‘recklessness’ and ‘intention’, as they apply under the Criminal Code, significantly raise the bar for a successful prosecution. It is not easy to satisfy these thresholds. As for some sort of crystal ball gazing as to how it can be interpreted, we have made it clear in the bill, we have made it clear in the explanatory memorandum, which can be used to interpret the bill, and I am making it clear here that in applying section 5.6 of the Criminal Code, as I have said, the prosecution have to prove beyond a reasonable doubt that the person intended to communicate information to someone else and that person was reckless as to whether the communication could prejudice the physical security of nuclear material.

I can envisage debates in a court of law about whether or not that was reckless. The information is provided to constituents in the area and the actions and responses of those constituents may constitute a whole range of different things. They may constitute some uncertainty about nuclear material being transported through their area and they may cause some people who are particularly concerned about the nuclear industry—an industry that I would consider to be the most dangerous industry on our planet—to therefore decide to be involved in activities where they let others know about the transport of the material through their area so that they can be involved and informed in the debate about whether this is an appropriate thing to be occurring.

The minister has made it quite clear for the Senate that these issues will be open to interpretation in the court. I think that, as it is unclear here in the Senate whether or not local councils will be caught by this legislation—and I thank the minister for pointing this out—it will also be unclear in the courts as to whether local councils will be caught as a result of the provision of this information.

**Senator PATTERSON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.38 p.m.)—That is not what I said and I want to make sure that Senator Nettle is absolutely and totally aware that that is not what I said. You have misinterpreted what I said. What I said was that, when we make legislation here, we do everything we can to ensure that it will be interpreted in the way we meant, but we cannot always guarantee that. With the best intentions and will in the world, it may not necessarily be interpreted in the way we intended. We have done everything we can to ensure that this legislation is interpreted to reflect what we are doing, which is to ensure the physical security of nuclear material or
an associated item and to ensure that people do not use information in a way which defeats security arrangements that have been put in place.

Senator NETTLE (New South Wales) (1.39 p.m.)—I have another question for the minister about this particular part of the legislation and it relates to how this legislation will impact on whistleblowers. The minister may recall there has been an ARPANSA inquiry and we have debated many times in this chamber instances to do with the construction of a Lucas Heights reactor. Those issues revolved around information provided to a journalist by a whistleblower about construction techniques at Lucas Heights. It was questioned whether the construction that was occurring would mean that material meant to be enclosed in the safety main tank of Lucas Heights would be outside the main tank: whether the drilling of the holes in the wrong part of the main tank of Lucas Heights meant that that material would be outside the safety element that it was supposed to be a part of.

I think any fair-minded person would suggest that the physical security of that nuclear material in the main tank may have been prejudiced by the construction that was being questioned here in the Senate and in the public arena. This was an instance where a whistleblower involved in the activities occurring at Lucas Heights informed a journalist and therefore the public about construction methods which they believed were impacting on the physical security of that nuclear material at Lucas Heights. There have been inquiries carried out by ARPANSA into this particular issue subsequently. Would the minister explain for the Senate how this legislation would come into play in that particular instance that we have been dealing with in the Senate for some months now?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.42 p.m.)—I am advised that the issue and example that Senator Nettle has raised is not one that would pertain to this bill because it is an issue of safety and there was no nuclear material involved.

Senator NETTLE (New South Wales) (1.42 p.m.)—I thank the minister for her answer. Perhaps the minister and the Senate can now understand why I asked this question. There have been serious concerns about the construction at Lucas Heights. This has come into the public arena and been a part of the debate because of information provided by somebody who was involved in the activities occurring at Lucas Heights. This was a whistleblower—somebody who brought information into the public domain that was not otherwise in the public domain.

The minister has given me an answer in relation to this particular instance. She says she has been advised that they would not be caught under this legislation. Would the minister now explain for the Senate how whistleblowers in similar circumstances—providing information about the security of nuclear material—would or would not be impacted upon by this legislation that the government is proposing?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.43 p.m.)—I do not know how else to answer this—I have answered it three times. I believe the issue to which Senator Nettle is referring was to do with the construction of the facility, when no
nuclear material was involved. It does not pertain in this circumstance. This bill is about providing information which would prejudice the physical security of nuclear material or an associated item. I cannot explain it any more than that. I am advised that the example Senator Nettle has given would not be affected by this bill, because it was about construction at Lucas Heights, as I said, without nuclear material being involved.

Senator NETTLE (New South Wales)  (1.44 p.m.)—I repeat for the minister that I accept the answer that the minister has given: that she has been advised that the particular example I used would not be caught under this legislation. My last question related to whistleblowers who are providing information about the physical security of nuclear material. I used the example in relation to construction, because construction is a clear example of where the physical security of that nuclear material may come into question. The minister has provided, and I accept, the answer in relation to that particular example. The question I am now asking is: can the minister explain what is in the legislation to ensure that whistleblowers providing public information about the physical security—not safety—of nuclear material are not caught under this legislation?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women)  (1.46 p.m.)—This legislation is about a person providing information to an adversary which would defeat the security arrangements which are in place. I think that Senator Nettle and everyone else here would understand exactly what that means.

Senator NETTLE (New South Wales)  (1.46 p.m.)—Thank you to the minister for assuming that I understand what that means. But I would like the minister to explain what she meant in the previous answer in relation to the physical security of that material, because this is what is going into the law and this is a nuclear industry for which a whole range of inquiries, run both by the parliament and in the public, have occurred as a result of whistleblower information provided. I talked about the example at Lucas Heights. The latest Senate inquiry into uranium mining that Senator Allison and I were involved in was responding to whistleblowers who had been providing information about environmental monitoring of mining at different uranium mines in Australia. So this is a nuclear industry into which there have been many public inquiries, many changes and many significant improvements in safety, regulation and monitoring of the industry as a result of information provided to the public domain by whistleblowers. This is an industry that does not have a good public perception and does not have a good safety record internationally and over which many questions have been raised here in Australia. That is why it is crucial, if the government is proposing to bring in legislation that imposes penalties of two years imprisonment for people who provide information about instances relating to security that are occurring within the nuclear industry, that we get it right. So I will give the minister the opportunity to explain to the chamber how this legislation will or will not catch whistleblowers in relation to the nuclear industry.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women)  (1.48 p.m.)—I have nothing more to add. I have clearly expressed the intention of the clause. The government is supporting the additional amendment of the Labor Party to further strengthen this part of the bill and I think we could be here all day with my going around and
around in circles with Senator Nettle over this issue. It is very clear that the information would have to enable an adversary either to defeat or to have an increased likelihood of being able to defeat security arrangements which are in place surrounding or associated with the physical security of nuclear material or an associated item.

Senator Nettle (New South Wales) (1.49 p.m.)—We may be able to deal with this issue now rather than in the next amendment, which relates to people who enter an area of a nuclear facility. People may recall that there was an incident where a range of antinuclear campaigners from Greenpeace were involved in putting up a series of banners at Lucas Heights.

The Temporary Chairman (Senator Watson)—Order! Perhaps it might be better to clear this one amendment rather than to jump ahead to the next amendment, because your item is the subject of the next amendment.

Senator Nettle—Yes. Thank you, Chair, for pointing that out. The incident that I am talking about relates to both these two items that we are talking about, so if I do it now it saves us from doing it later. But I am happy to take your advice on that.

The Temporary Chairman—You may go ahead.

Senator Nettle—I was giving the minister an example of a range of antinuclear campaigners putting up a series of banners at Lucas Heights about work that was being done there. The issue we are about to get on to relates to people being on the premises, but the issue we are dealing with now is information being provided to people that may prejudice physical security. I do not know the circumstances in which campaigners were able to put up banners at the Lucas Heights facility, but can the minister explain whether or not somebody who provided information to those campaigners—about where they could put up banners in the Lucas Heights facility—would be caught under the part of the legislation we are dealing with now?

Senator Patterson (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.51 p.m.)—I think we should take the advice of the Temporary Chairman and discuss this when we are looking at the next amendment of the Democrats. So I would humbly suggest that we deal with the amendments before us and then move on. I will attempt to answer that question when we get to the relevant amendment.

Senator Nettle (New South Wales) (1.51 p.m.)—I will ask further questions related to people being on a facility when we are on that particular amendment. My question now relates to providing information to people that might prejudice the physical security of nuclear material or a nuclear item. If someone provides information to an antinuclear campaigner who is then involved in an action—putting up banners at Lucas Heights is the example I am using—will they be caught under this part of the legislation?

Senator Patterson (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.52 p.m.)—I believe I have answered this three times. It will be four times when I repeat it. It is very clear. As I said, if you apply section 5.6 of the Criminal Code, the prosecution would have to prove beyond reasonable doubt that the person intended to communicate information to someone else and that that person was reckless. That raises the bar for a successful prosecution. I said how difficult it would be under the Criminal Code to prove that a person was reckless and whether the
communication could prejudice the physical security of nuclear material or an associated item.

Senator Nettle (New South Wales) (1.53 p.m.)—I think the minister is suggesting that we will leave it to the courts to determine whether providing information to an antinuclear campaigner who proposes to put up a banner in a facility such as Lucas Heights is reckless or not. I think that is the answer that the minister is giving us. The government proposes to leave it to the courts to determine whether or not an antinuclear campaigner putting up a banner in a facility like Lucas Heights is reckless.

Senator Patterson (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.53 p.m.)—The court would have to determine whether the communication could prejudice the physical security of nuclear material or a nuclear item beyond reasonable doubt.

The Temporary Chairman (Senator Watson)—The question is that items 26, 27 and 72 of schedule 1 stand as printed.

Question agreed to.

Senator Allison (Victoria) (1.54 p.m.)—by leave—The Democrats oppose schedule 1, items 45 and 46 in the following terms:

(5) Schedule 1, item 45, page 10 (line 19) to page 11 (line 20), TO BE OPPOSED.

(6) Schedule 1, item 46, page 11 (lines 21 to 25), TO BE OPPOSED.

Proposed section 31A in item 45 would mean that a person would commit an offence if that person entered an area or got into a vehicle, aircraft or ship. As someone who has been a protestor at Jabiluka and has had a great deal of sympathy for the Mirrar people and for Yvonne Margarula, this is the amendment which I am most interested in. It would be interesting to ask the minister whether imprisonment for six months would be a penalty that would be applied to me or to her or to anyone else who was part of that protest.

Proposed section 31A would create an offence for entering onto a restricted area without appropriate authorisation. Like proposed sections 25A and 26A, there are significant problems with it. Most importantly, it applies to activities and facilities that are not a security risk and do not have any bearing on national security. The most obvious example is uranium mining and milling. As I have already said several times, there is no special public security risk associated with a uranium mine, and there is no need to create laws that place people behind bars for entering a uranium mine where there is no evidence the person intended to commit a serious crime. This provision will do that and the only thing it will achieve will be to intimidate protestors and prevent constructive debate about uranium mining.

Clearly, the nuclear facility that poses the greatest public safety risk is Lucas Heights. However, entering onto this land without authorisation would involve a contravention of section 89 of the Crimes Act 1914, which already prohibits unauthorised entry onto prohibited Commonwealth land. There are also satisfactory laws to capture circumstances where a person enters onto property with the intention of obtaining nuclear materials for use in a nuclear weapon, to sabotage a nuclear facility or to hijack or sabotage a vehicle, aircraft or ship containing nuclear materials. For example, a person who entered onto a ship carrying nuclear materials with the intention of stealing the material or blowing it up could be guilty of breaching the Nuclear Non-Proliferation (Safeguards) Act, the Crimes (Ships and Fixed Platforms) Act 1992, the Criminal Code Act 1995 and numerous other laws of states and territories. This provision will serve no useful purpose.
and will not make our nuclear facilities any more secure. For this reason, the Democrats oppose these provisions. Our opposition achieves that objective.

Senator Nettle (New South Wales) (1.57 p.m.)—I would be interested in hearing from the minister about this part of the legislation and the example that Senator Allison used in relation to how this now applies to uranium mining. Perhaps the minister could explain to the chamber whether this part of the legislation would deal with an individual who entered an area where uranium mining was occurring.

Senator Patterson (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.58 p.m.)—The government will not be supporting the amendments. Given the nature of nuclear items and facilities, from the perspectives of security and public safety, it is appropriate and therefore a legal requirement to restrict access to a designated protected area. The bill increases the penalty for trespass in a protected or similarly designated area but under very specific conditions. I have just been advised that ASNO, the regulator, designates protected areas, that uranium mines are not designated protected areas and that, at the moment, there are one or two designated protected areas. Trespass in a protected area is judged to be a more serious transgression than general trespass—I suppose general trespass on a uranium mine. In a designated area it is seen as a more serious transgression. Compromise of a protected area—for example, by protesters at the reactor at Lucas Heights—prejudices our defence in depth.

One of the issues is that illegal entry by protesters confuses the assessment that has to be made by those people involved in protecting and guarding the facility. They have to differentiate between protesters and intruders or attackers and adjust the response accordingly. This could increase their effective response times. A slower effective response increases the likelihood that an attacker would achieve their intended objective. It does not preclude protesters being outside a protected area like Lucas Heights with banners, protesting and indicating their objection to whatever they might be objecting to. But I think reasonable people would understand that the places that are designated—and they are designated by ASNO—are very limited and they do pose a risk of trespass that is not the same risk in other non-designated or protected areas.

We are talking about a protected area which has been designated and, as I said, at any one time those designated areas are very few in number. If one thinks about the enormous responsibility placed on the people protecting those areas, it is only fair because they would be the ones having to answer if they misjudged a protester or even a person who could disguise themselves as a protester. Senator Nettle should not get agitated about this but you could imagine a situation where a person of ill-intent, not just a person who is protesting on a particular issue, could disguise themselves as a protester and get access to a designated area, and it would be very difficult for the guard or whoever is maintaining security of that facility to make that decision. Even if that were not the case, it is still very difficult for them to make that decision and any delay could prejudice the response necessary to protect the public and the people involved in the facility. We are saying that we deem trespassing in a designated area a more serious behaviour than somebody trespassing in a non-designated protected area. Protected areas are very few and far between at any one time. Again, if you apply section 5.6 of the Criminal Code to this offence, the prosecution would have
to prove beyond reasonable doubt that the person intended to enter the area and, as I said, strict liability applies to paragraphs (b) and (c).

Senator ALLISON (Victoria) (2.03 p.m.)—It is my understanding that a uranium mine could indeed be a restricted area. Can the minister get clarification on that point? It is my understanding that, if a permit is sought, this would be the effect of it.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.03 p.m.)—I will have a go at this. ASNO is the regulator and it designates protected areas. There are no uranium mines that are protected areas at the moment, but I believe that if there were transportation of nuclear material that transportation can be designated as a protected area. So there are situations, but at the moment there are very few—in fact, one or two protected areas—which would come under this legislation.

Senator ALLISON (Victoria) (2.04 p.m.)—There is not a lot of nuclear material moved around in this country. It probably comes down to waste material and uranium itself. Are they the circumstances in which an area would be designated as restricted or protected and come under this provision? If this is all about transporting uranium, why wouldn’t it also be about the mining process?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.04 p.m.)—The whole key to this is about protecting the proliferation of sensitive materials and facilities. ASNO would not anticipate designating a uranium mine as a protected area under this bill. The aim of the bill is to protect the proliferation of sensitive materials and facilities.

Senator ALLISON (Victoria) (2.05 p.m.)—I will ask specifically then about transport. What material in transport in a vehicle, an aircraft or a ship would be likely to be restricted? Is it waste? Is it uranium? Is it something else?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.05 p.m.)—I am advised that if ASNO were to designate transport as a designated area it would relate to spent fuel, new or fresh fuel, but not waste.

Senator ALLISON (Victoria) (2.06 p.m.)—Can we assume as well that nuclear waste dumps will not be restricted areas—or will they? Is some distinction to be drawn between low-level waste and intermediate-level waste?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.06 p.m.)—I am advised that waste is not being dealt with in this bill. It is about dealing with proliferation of sensitive materials and facilities like Lucas Heights.

Senator ALLISON (Victoria) (2.07 p.m.)—With regard to Lucas Heights, can I ask the minister to explain why it is that section 89 of the Crimes Act does not already do that? What is deficient in section 89 with regard to Lucas Heights? If all we are talking about here is Lucas Heights, then what is it about the Crimes Act that it fails to do what this bill would appear to want it to do?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.07 p.m.)—I think that I did answer that when I first stood up and said that trespassing in a protected area is judged as a more serious transgres-
sion than general trespass. There are a number of reasons for this, but one of the reasons is the fact that a person charged with the responsibility of protecting that facility or that sensitive material may be delayed in making a decision about whether that person was a protester or an adversary who had designs on the facility or the material, which would put the public or the public interest at risk. I think honourable senators would agree that trespassing in those sorts of areas—as I said, they are very few and far between, and ASNO regulates them—is a more serious transgression than general trespass.

Senator ALLISON (Victoria) (2.09 p.m.)—I would like to make the point that I think Senator Nettle raised before. Let us be clear about this: this legislation would make it an offence, with a penalty of six months imprisonment, to enter such an area. So someone who was found to enter Lucas Heights could expect to be imprisoned for six months, regardless of the purpose. According to the way I see this, a person commits the offence if they enter into an area or get into a vehicle, aircraft, ship et cetera. Anyone who enters into Lucas Heights would be likely to end up with a penalty of six-months imprisonment. Is that stating it too bluntly?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.09 p.m.)—Neither Senator Allison nor I are lawyers, but the prosecution would have to prove beyond reasonable doubt that the person intended to enter the area. If you chartered a light aircraft from here to get to Sydney because there was an air strike and your plane crashed and, by some godforsaken chance you happened to drop into Lucas Heights and you could prove beyond reasonable doubt that you got there accidentally, I guess this law would not apply to you. The prosecution would have to demonstrate beyond reasonable doubt that you or the person intended to enter the area. As I said, these events are very few and far between, and the government sees trespassing on a designated area as a more serious transgression than general trespass. You have to admit that there is signage and people are very well aware. It also puts those people who have the responsibility of guarding those facilities in a very difficult position if they have to make the decision about whether it is a protester or an adversary who has evil intent.

We see the transgression of trespassing onto that designated area as being more serious than general trespass. But, as I have said before, you have to prove beyond reasonable doubt, and there may be some exotic reason why you happened to end up by chance at Lucas Heights when you did not intend to get there. I cannot imagine anything other than the bizarre example I described for getting there without intending to, but the prosecution would have to demonstrate beyond reasonable doubt that you intended to be there in order for this legislation to take effect.

Senator ALLISON (Victoria) (2.11 p.m.)—That was not quite my question. But coming back to the Crimes Act, section 89 already creates an offence of entering a prohibited area, so it is not general trespass. The question is not whether you are meant to be there; it is the fact that that legislation already makes it a criminal offence to enter a prohibited area. So my question is: why do we need this provision in this legislation? It is already a criminal offence to do that.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.12 p.m.)—I have run out of ways to say that we see trespassing on a designated area as being more
serious when it is the aim of the government and of those people whom we are asking to protect the proliferation of sensitive materials and facilities to do that. We have put them in the position of protecting those facilities, and the government believes we ought to ensure that it is very clear that that is seen as a serious transgression to enter that property, a protected designated area. In prosecuting that person who trespassed in that way on those designated protected areas, the prosecution would have to prove beyond reasonable doubt that the person intended to be there. I think most Australians would believe that that was reasonable and fair. I find it a little difficult, a little odd, a little ironic, that Senator Allison—who would be one of the strongest advocates for ensuring that we do not have a proliferation of these sensitive materials—would object to the government ensuring, as best we can, that they are protected. I have nothing more to say. I think we have most probably exhausted this discussion.

Senator ALLISON (Victoria) (2.14 p.m.)—I think we are close to the end, but it is my understanding that in this case strict liability applies. In fact, I think the minister might have said that earlier. As a result, there is no need for someone to prove that a person knew the area was restricted, so that is not the case. It is also my understanding that, under section 89 of the Crimes Act, prohibited areas include such things as defence weapons stores, defence fuel stores and defence bases. My question is—if the minister could possibly answer another one—why is Lucas Heights more important than those facilities?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.15 p.m.)—I did say that strict liability applies, but Senator Allison may not have heard me say that strict liability applies only to paragraphs (b) and (c).

Senator NETTLE (New South Wales) (2.15 p.m.)—I thank the minister for clarifying the situation whereby somebody who was at Lucas Heights and put up a banner would be caught under this legislation. I agree with the minister’s comments that it is sometimes difficult to make a determination that a person is in an area with the intention of being involved in criminal activities surrounding the physical security of nuclear material; or being involved in acts which may cause significant harm or damage to people; or raising genuine concerns about the nuclear industry, such as safety and the many problems with the nuclear industry. It is sometimes difficult to make such a determination. Certainly, that issue was central to the debate that occurred in this chamber a year ago on the ASIO legislation—for example, making determinations about the purpose for which the person was there.

With regard to the previous offence we were talking about, under section 26 of the legislation, the opposition proposed an amendment relating to the intention of the person delivering the information. The Labor senators, the committee and I have already argued that there are flaws in that proposal in that it does not necessarily capture all instances. My question is: if the opposition and the government believed that it was appropriate to insert into this legislation a provision relating to the intention of the person communicating information, why, in this instance of trespass at a nuclear facility, do the government and the opposition believe it is not appropriate to insert such a provision relating to intention? Perhaps the minister or the opposition could answer that question for me.
We designed the bill in the way that we designed it. The Labor Party moved an amendment, which we agreed to. The question might be better directed to the Labor Party as to why they did not think an amendment was necessary in this area, but the government is satisfied with the way in which the bill has been drafted.

Senator NETTLE (New South Wales) (2.21 p.m.)—It is important that we get this right, because this particular part, and the earlier part of the legislation we were talking about, gives Australian Protective Service officers the capacity to arrest, without warrant, people who are there. In this section, as well, we have the burden of proof reversed so that the onus is on the individual to prove that they did not commit the offence rather than on the prosecutor to prove that they did commit the offence. This goes back to the concept of innocent until proven guilty that we were talking about before. This part of the legislation proposes arrest without warrant reversing the onus of proof.

The minister—and I agree with her—has talked about the difficulty in making determinations as to the individual’s intention, whether there is harmful intent or whether it is legitimate protest activity. In the previous instance, the Labor Party proposed putting up an amendment to deal with this issue of intent. I again ask the minister or the opposition why in this instance they feel it is not appropriate to put up an amendment to deal with intention. We are talking about arrest without warrant, six months imprisonment and reversing the onus of proof on the individual for putting up a banner at Lucas Heights. Why is intention not appropriate here?

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.22 p.m.)—
am advised that intention is already covered in the Criminal Code. I am advised that what Senator Nettle has said regarding the APS Act is not correct. It confers power of arrest without warrant only where the APS officer believes on reasonable grounds that the person has just committed or is committing an offence prescribed in section 13 of the act, but it requires the APS officer to deliver the person forthwith into the custody of a police officer to be dealt with according to law. Otherwise the APS officer must release a potential suspect.

Senator NETTLE (New South Wales) (2.23 p.m.)—Thank you. You have explained that the APS officer can arrest without warrant and then must hand to the police. The minister was speaking before about the concerns that I and Senator Allison have about the proliferation of nuclear material, and she was intimating that she would have thought that we in particular would be concerned about the proliferation of this material. That is true. I and other senators are particularly concerned about the proliferation of material, and that is why we support the parts of this legislation that deal with that issue.

This provision in the legislation imposes a six-month imprisonment for an individual who has unauthorised access to these areas. I understand that the government is addressing in this legislation the issue of harmful intent. The issue here is about, perhaps, terrorist activity and people having access to nuclear material that may cause harmful intent. I am asking the minister this question because I have been involved in the debate on the ASIO legislation and we now have the Attorney-General in the other place proposing amendments to the level of detention for people who are engaged in these sorts of activities. Those periods of detention are quite different to what is being proposed here. A range of terrorist offences have penalties which are far greater than the penalty of six-months imprisonment which is being proposed here.

To me, and I am sure to many other people, that raises questions about the intention of this government. Is it targeted to individuals causing harmful intent—for example, terrorists? Or is it targeted to other individuals that we have been talking about here—for example, protestors? For me, that penalty of six-months imprisonment is an indication. I am just wondering if the minister would like to make a comment on that.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (2.25 p.m.)—This is going to be my last comment, because we have got to the point where I am repeating myself over and over again. I will say again that Lucas Heights, which is one of the locations in question, has designated protected areas within it. At the moment there are one or two designated areas. Trespassing on the restricted area is seen as a serious transgression and attracts penalties. Government sees trespassing in a designated area—and the aim of ANSTO when it designates an area would be to stop the proliferation of sensitive materials and facilities—as a more serious transgression than general trespass or trespassing in a restricted area. I do not want to put words into the Labor Party’s mouth, but I presume that the Labor Party also support this, since they are prepared to accept this legislation. I have nothing more to add. I commend the bill to the chamber, and I suggest that it might be time to move on, since I have now answered this question three or four times.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that items 45 and 46 of schedule 1 stand as printed.

Question agreed to.
Senator ALLISON (Victoria) (2.27 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 3191:

(1) Clause 2, page 2, at the end of the table, add:

4. Schedule 4 The day on which this Act receives the Royal Assent

(2) Page 23 (after line 7), at the end of the bill, add:

Schedule 4—Transportation of radioactive waste
Australian Radiation Protection and Nuclear Safety Act 1998

1 Section 13 (after the definition of seize)

Insert:

self-governing Territory means:

(a) the Australian Capital Territory;

or

(b) the Northern Territory; or

(c) Norfolk Island.

2 After section 31

Insert:

31A Consent of the States and Territories

(1) A controlled person must not transport a controlled material or controlled apparatus into or through a State or self-governing Territory without the written consent of the relevant State or Territory.

(2) A controlled person must not construct or operate a controlled facility in a State or self-governing Territory without the written consent of the relevant State or Territory.

(3) A person who contravenes this section is guilty of an offence punishable on conviction by imprisonment for a term not more than 5 years, a fine not exceeding 2,000 penalty units, or both.

3 At the end of section 32

Add:

(4) The CEO must not issue a licence to a controlled person that authorises the construction or operation of a controlled facility in a State or self-governing Territory without the written consent of the relevant State or Territory.

4 At the end of section 33

Add:

(4) The CEO must not issue a licence to a controlled person that authorises the transportation of a controlled material or controlled apparatus into or through a State or self-governing Territory without the written consent of the relevant State or Territory.

5 Section 83

Repeal the section.

Democrats amendment (1) provides that schedule 4, which contains the substance of our state consent amendments, commences on the date the bill receives the royal assent. Amendment (2) would amend the Australian Radiation Protection and Nuclear Safety Act 1998 and seeks to achieve three things. Firstly, it will prevent the construction and operation of a controlled facility, which includes a nuclear reactor and a nuclear waste dump, by the Commonwealth or a Commonwealth contractor in a state or self-governing territory without the written consent of the relevant state or territory. This is contained in schedule 4, items 2 and 3. Secondly, it will prevent the transportation of a controlled material, which includes nuclear waste, or controlled apparatus into or through a state or self-governing territory without the written consent of the relevant state or territory. That is contained in schedule 4, items 2 and 4. Thirdly, it will repeal section 83 of the ARPANS Act, which currently excludes the operation of prescribed state laws to activities authorised under the act. That is contained in schedule 4, item 5.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Min-
ister for the Status of Women) (2.29 p.m.)—
The government will not be supporting these
amendments. As I mentioned earlier, when
there is transportation of these sorts of materi-
als the local councils and the states are ad-
vised. And I am advised that there are dis-
cussions with the state and the Common-
wealth regarding the safety of the transporta-
ton of that material. This amendment would
give a right of veto to all of the states and
territories with regard to the transport of the
material under discussion, and the govern-
ment will not support this amendment and the
effect that this would have.

Senator ALLISON (Victoria) (2.30
p.m.)—It would be useful to hear what the
ALP intend to do here. I would have thought
that the state Labor government in South
Australia would appreciate these amend-
ments being successful since it is what state
governments around Australia have asked
for, as I understand it—especially South
Australia, which expects to have this waste
dump imposed on it. No doubt other states
would not wish to have the Commonwealth
simply advise them that it is happening—in
fact, we know that that is very much the
case. So I look forward to getting ALP sup-
port for this.

Senator CHRIS EVANS (Western Aus-
tralia) (2.30 p.m.)—I hate to disappoint
Senator Allison—and it is not connected
with her earlier vicious assault on the Labor
Party, despite what she described as our
‘fragile state’ today! I have only just recov-
ered from that. Unfortunately, I find myself
in agreement with the government on this
particular issue. While I am sure South
Australia is currently in safe hands it was not
always thus and some time in the future it
may again fall into inappropriate control.
Essentially, our view on this comes down to
the question about whether the Common-
wealth ought to be giving up its current abil-
ity to control these issues. We are effectively
being asked to curtail the power of the
Commonwealth. We see this as an appropri-
ate area of Commonwealth responsibility and
we will not be voting to curtail the authority
and power of the Commonwealth in this area.

Question negatived.
Bill, as amended, agreed to.
Bill reported with amendments; report
adopted.

Third Reading

Senator PATTERSON (Victoria—
Minister for Family and Community Ser-
vices and Minister Assisting the Prime Min-
ister for the Status of Women) (2.33 p.m.)—I
move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

BUSINESS

Rearrangement

Senator PATTERSON (Victoria—
Minister for Family and Community Ser-
vices and Minister Assisting the Prime Min-
ister for the Status of Women) (2.33 p.m.)—I
move:
That government business order of the day no.
6 (States Grants (Primary and Secondary Educa-
tion Assistance) Amendment Bill 2003) be post-
poned till the next day of sitting.
Question agreed to.

MARITIME TRANSPORT SECURITY
BILL 2003

Second Reading

Debate resumed from 9 October, on mo-
tion by Senator Minchin:
That this bill be now read a second time.
(Quorum formed)

Senator O’BRIEN (Tasmania) (2.36
p.m.)—The Maritime Transport Security Bill
2003 is a significant bill for the security of
Australians and for the sustainability and stability of our critical international trade. The maritime industry is the linchpin in the import, export and domestic shipping tasks necessary for our economy and jobs. This debate is not just about highly skilled seafarers and waterside workers in a modern Australian fleet but also about the flow-on to support industries like engineering, maritime training, freight forwarding and the like. Labor will support this bill but, in doing so, we take the opportunity to make it crystal clear that we have a very different view on the value of our shipping industry.

For too long, the Howard government have claimed that Australia is a shipping nation, not a nation of shippers. For too long, they have had their heads in the sand about the importance of shipping to Australia as an industry in its own right. It has been one of the most ideologically driven areas of Howard government policy. There has been a total focus on cheaper shipping costs achieved by busting the unions and sacrificing the Australian industry. The Howard government show their contempt for Australian shipping by refusing to level the playing field.

The Australian Shipowners Association has regularly highlighted 10 pieces of legislation that discriminate against the Australian industry in favour of foreign shipping operators. The single and continuous voyage permits have been manipulated to undermine the legitimate cabotage provisions, which are by no means unique in the world. The United States fiercely protects its domestic coastal trade for security, environment and employment reasons. So too has the Australian parliament endorsed legislation to protect our domestic trade. Those provisions are the cabotage provisions in the Navigation Act.

Labor has continued to identify the security and environmental risks associated with foreign flag vessels and their crew being given unfettered access to Australian coasts and ports. But the Howard government continues to open the door. It was only last year, after years of turning a blind eye to the abuse, that the Minister for Immigration and Multicultural and Indigenous Affairs took some notice of Labor’s calls and placed some restrictions on continuing voyage permits. The situation is still not good enough. The bill before this chamber is about maritime security, but it is only one element of the picture. It makes a good start to putting in place a consistent national and maritime security framework, but the reality is that the stability and sustainability of this industry are also fundamental to our maritime transport security.

The Australian Labor Party and the maritime unions are not lone voices on these matters. The Australian Shipowners Association recently released an independent review of Australian shipping. That review was conducted by two former transport ministers: former National Party minister John Sharp and former Labor Party minister Peter Morris. These former ministers spoke to an extensive cross-section of government and industry players. The foremost priority issue identified by that review was the need for policy clarity. The report states:

If all sectors of the industry are unanimous on any single issue, it is the need for Government to enunciate a clear, certain and consistent policy towards the industry, and for regulatory activities to be carried out in a consistent way.

That review heard concrete evidence from industry players that uncertainty was stifling investment decisions. Specific new and existing projects were at risk, and are at risk as we speak, because the government is not doing its job to provide regulatory certainty. The Minister for Transport and Regional Services should be minded to listen to the findings of his former colleague and predecessor.
The Morris-Sharp review also came to some specific, damning conclusions on security. Conclusion VIII stated:

The Review notes the apparent inconsistency between the Government’s policy for coastal shipping, ie to obtain the cheapest priced shipping services by accessing foreign ships, and its policy of strengthening border protection.

The Review notes measures to be undertaken by the US Government to limit access to its coastline to those vessels and crew from nations regarded as having a high degree of security. The review received evidence that Australia risks losing access to US markets due to the use of foreign flagged vessels and crews that do not have the high degree of security required under their strengthened border protection regime.

That, I stress, is the finding of the review from two former transport ministers, one from the coalition side of politics and one from my side of politics. As we consider this maritime security bill, there are chilling findings and conclusions from extensive discussions Labor has held with Australia’s maritime industry players. Also pertinent to this bill is the conclusion and warning of the review in relation to the cost of maritime security:

Evidence was provided confirming that increased security would result in increased costs that will be borne by the shipping task. Australia faces the challenge of remaining competitive, as some competitor’s governments will meet all or a portion of the increased security costs. Therefore any new measures would need to be pursued within competitive bounds.

This issue was also brought before the Senate committee.

Australian business and other tiers of government will pull their weight, but it is not acceptable for the Australian government to walk away from all responsibility. The Executive Director of the Association of Australian Ports and Marine Authorities, Mr John Hirst, reminded us in the press that in the United States the federal government had allocated $US1 billion to port authorities to upgrade security. The US government will weigh in the equivalent of $A1.53 billion to batten down the security hatches, and the Australian government will weigh in nothing.

The costs in Australia are not insignificant. The explanatory memorandum advises a conservative estimate. We are informed that the total set-up costs to security related ports, including port facilities within these ports, could be up to $300 million, with ongoing costs of up to $90 million per annum. With the US and other countries subsidising these costs, the level of disadvantage to the Australian industry is high, given that this government is not providing any assistance. To be correct, the government has allocated a sum of $15.6 million over two years for maritime security. It will be spent within the department to put in place a regulatory regime. The Senate committee has agreed that these concerns about costing are reasonable. The committee also suggests the government discuss these funding issues with the states and with the industry.

As I said at the outset, Labor supports this bill. The bill will deliver a national, consistent security framework for the industry. It will enhance maritime transport security in a number of ways. It will establish a maritime transport security regulatory framework, and provide for adequate flexibility within this framework to reflect a changing threat environment. It will implement the mandatory requirements in chapter XI-2—the International Ship and Port Facility Security Code—of the Safety of Life at Sea Convention of 1974 to ensure that Australia is aligned with the international maritime transport security regime. It will ensure that identified Australian ports, port facilities within them and other maritime industry participants operate with approved maritime security plans. It will also ensure that certain
types of Australian ships operate with approved ship security plans; issue international ship security certificates to Australian ships which have been security verified so that these ships will be able to enter ports in other SOLAS contracting countries; and use mechanisms to impose control directions on foreign ships that are not compliant with the relevant maritime security requirements in this bill.

This is a large and complex bill that has had to be finalised in a miraculously short amount of time in response to the events of 11 September. The maritime industry is a global industry. The regulatory regime therefore has also to be a global one. The processes of global rule making have historically been long and protracted. It is a credit to the International Maritime Organisation, its member nations, the industry, the unions and the departmental officers that the ISPS Code and framework enshrined in this bill have reached such an advanced stage in the time frame that has been allowed.

The shadow minister, the member for Batman, has been involved in extensive negotiations with the Minister for Transport and Regional Services to facilitate passage of this bill. We hoped that it would be passed today, but that appears unlikely. To continue to operate in the industry, each operator must have approved security plans and an approved ISSC by 1 July 2004. Labor have been fully cognisant of this deadline and its importance. When the bill passed the House of Representatives, the shadow minister advised of Labor’s qualified support for the bill and set out a range of concerns. The Senate committee has extensively reviewed those issues in the bill and the draft regulations. I can advise that the shadow minister, Mr Ferguson, has finalised negotiations with the government to attend to Labor’s concerns.

I understand that government amendments will be moved to reflect the outcome of these negotiations. On that basis, I can signal Labor’s support for them. The important amendments for Labor are those that address the definition of unlawful interference in maritime security. They are important to Labor. There has been a concern that the bill undermines these established rights. With these amendments to the purpose of the bill and the definition, the bill will now be very clear that this is not the case. When this bill returns to the other place, assuming that it is passed here with those amendments, the shadow minister will outline other understandings reached with the minister to assist passage of this bill and ensure the effective implementation of this new security regime. I commend the bill to the Senate.

Senator ALLISON (Victoria) (2.48 p.m.)—The Democrats recognise the urgency of the Maritime Transport Security Bill 2003 and for this reason we will be supporting the passage of the bill today. The bill introduces at Australian ports new security requirements which are required under the International Ship and Port Facility Security Code under the SOLAS Convention, to which Australia is a signatory. These arrangements must be in place by 1 July 2004. It is necessary to provide the shipping industry and the department with adequate time to implement the necessary arrangements; for that reason, we recognise the urgency for passing the bill.

These provisions were introduced to address international maritime security following the events of 2001. Whilst much attention has focused on aviation security and terrorism in air transport, terrorism at sea and in our ports is also of concern—if not of potentially larger concern—as is the security of shipping containers transported to and from sea ports on land. This bill introduces measures to address those concerns.
It is also the case that international ports may not accept ships arriving from ports which are not compliant with the International Ship and Port Facility Security Code. Should Australian ports not comply, the implications for foreign trade would be significant to Australia's international trade. As we are all very aware, living on an island continent, we are very dependent on marine shipping for international trade, and indeed for our economic livelihood.

I note that concerns were raised in the Senate committee regarding the need for ongoing consultation between the department and industry during the implementation of the provisions in the bill. I seek assurances from the minister that this consultation will occur. I note that concerns have been raised by the aviation industry regarding the lack of consultation in relation to the implementation of the aviation security bill, and it concerns me that we have seen lack of consultation in this bill too. When implementing any new regulatory regime or system, the government would be well advised to consult with those affected to ensure that the implementation goes smoothly and that the aims and objectives are achieved. I hope that the department will implement the provisions of this bill with that in mind. The bill in many ways resembles the aviation security bill; as with that bill, the concern has been raised that the bill lacks specificity and that industry participants will lack guidance from the department in implementing the provisions of the bill. Again, as with the aviation legislation, I hope that the department will take active steps to work with industry in this regard.

I note that there are amendments which will be moved in the committee stage and which seek to address some of the other concerns raised during the inquiry of the Senate Rural and Regional Affairs and Transport Legislation Committee. These concerns include the need to protect the religious rights and welfare of seafarers. The Democrats will support those amendments.

It is a pity that the Senate has not had more time to consider this bill and to work through some of those issues. I am sure senators are aware that there is currently a large workload before various Senate committees, including the Rural and Regional Affairs and Transport Committee. The bills have been dealt with in a very tight time frame. However, recognising the importance of the bill in light of our international obligations and potential impacts on international trade, the Democrats will be supporting the legislation.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (2.52 p.m.)—I commend the bill to the Senate and thank honourable members for their contribution.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (2.52 p.m.)—I table a supplementary explanatory memorandum relating to the government’s amendments to be moved to the Maritime Transport Security Bill 2003. The memorandum was circulated in the chamber on 26 November 2003. I also table a correction to the explanatory memorandum relating to this bill. I seek leave to move government amendments (1) to (4) together.

Leave granted.

Senator TROETH—I move government amendments (1) to (4) on sheet PY239:

(1) Clause 3, page 5 (line 14), after "to the", insert "rights, freedoms and".
(2) Clause 3, page 5 (after line 22), at the end of the clause, add:

(5) It is not the purpose of this Act to prevent lawful advocacy, protest, dissent or industrial action that does not compromise maritime security.

(3) Clause 11, page 18 (after line 26), at the end of the clause, add:

(2) However, unlawful interference with maritime transport does not include lawful advocacy, protest, dissent or industrial action that does not result in, or contribute to, an action of a kind mentioned in paragraphs (1)(a) to (h).

(4) Clause 31, page 32 (line 6), omit “50”, substitute “10”.

Senator O’BRIEN (Tasmania) (2.53 p.m.)—As I indicated in my contribution to the second reading debate, the opposition will be supporting these amendments to the Maritime Transport Security Bill 2003. They give effect to an agreement which has been reached between Mr Martin Ferguson, the member for Batman, and the Minister for Transport and Regional Services on necessary amendments regarding matters that might have impeded the rights and freedoms of employees in the industry, which I think we have now satisfied ourselves was not the intention of the original legislation but was nevertheless a potential consequence of it.

It is important to note that, with all of the measures that are being put in place to require a better security environment in relation to our maritime industries, there will be measures which will impede access by members of the public to our waterfronts—and some parts of the Australian waterfront have traditionally been very open to the public. This will signal quite a changed environment in some ports around the country, but it is conceded that some of those restrictions will now be deemed necessary. However, the rights to advocate, protest, dissent or take industrial action which does not result in, or contribute to, certain other actions mentioned in the legislation are effectively permitted by this legislation where it is made certain that those actions do not lead to a breach of this legislation by participants in any of those actions. As I said, we are happy to support that and we will be voting in favour of these amendments.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (2.55 p.m.)—It is essential for Australia’s trade and security interests that the Maritime Transport Security Bill 2003 be passed during the present sitting. This will enable industry to put the required security measures in place so that Australia can meet its international obligations by 1 July 2004 and confirm that it is a safe and secure trading partner. The amendments that the government has moved to the bill clarify this purpose.

Firstly, we have added a new purpose clause to clarify that the purpose of the bill is not to prevent lawful advocacy, protest, dissent or industrial action that does not compromise maritime security. Secondly, the definition of unlawful interference with maritime transport, which is what this bill is trying to prevent, has been changed so that it specifically excludes lawful advocacy, protest, dissent or industrial action. Thirdly, the maritime security outcomes—the key things that the maritime security regime will deliver—have been expanded to talk about protecting the rights, freedoms and welfare of seafarers. Fourthly, the penalty in clause 31 for failing to pass on information about the revocation of a security level has been reduced so that it is consistent with penalties for similar offences.

Many people have worked hard in cooperation with the government to develop the maritime security regime in an extremely short period of time. I thank the state and
territory governments, particularly transport officials and the police; industry associations, in particular the Association of Australian Ports and Marine Authorities, the Australian Shipowners Association and Shipping Australia Ltd; other industry representative organisations; the trade unions, particularly the Maritime Union of Australia and the Australian Institute of Marine and Power Engineers; many hundreds of people in the maritime industry who have participated in various consultation activities; and other Commonwealth departments and agencies with an interest in maritime security. The cooperation of all these people has been a key factor in the development of the bill, and the government looks forward to a continuing cooperative relationship as the bill is implemented.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (2.58 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**ADJOURNMENT**

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! It being 3 p.m., I propose the question:

That the Senate do now adjourn.

Australian Centre for International and Tropical Health and Nutrition

Ros Bower Award

Senator SANTORO (Queensland) (3.00 p.m.)—Given the time of the day and the time of the week, I seek leave—with permission from the Opposition Whip—to incorpo-
of maintaining and improving the health of Australians, yet attracts only 2 per cent of the total health budget.

For this small investment, Australia has one of the best health promotion programmes in the world, a record of food and drug safety that most other developed countries aspire to, and programmes such as the National HIV Strategy have had unparalleled success.

One of the contributors to Australia’s success in public health has been the development of a strong research and education capacity in public health, underwritten by the Australian Government Department of Health and Ageing.

Without this support, it is clear that Australia would not have anything like its current capacity.

In the current highly competitive tertiary sector, the basis of University funding is from the Department of Education, Science and Training. But the funding formula favours large undergraduate classes rather than smaller postgraduate classes and specialist groups in public health.

The simple conclusion is that without PHERP, public health would die.

For example, how do you provide postgraduate students with the necessary field experience, especially in developing countries?

Part of the answer is PHERP. The other is the significant leverage that PHERP funded institutes gain from competitive research grants.

The Howard Government has appropriately identified the importance of prevention and health maintenance as major areas of research if Australia is to meet the challenges of the Intergenerational Report.

National Health Priorities have been set.

Moreover, new threats such as SARS and bioterrorism reinforce the need or a strong base for research, education and training in public health.

If we are to support the Prime Minister’s ‘Safeguarding Australia’s Health’ initiative, we must think of Australia as part of a regional—and global—family.

Not only the health aspects of disease come into play, but also the costs of managing and controlling them in a public health sense.

SARS, which emerged in late 2002 and became a global problem in 2003, was reported to have cost the Asia-Pacific region something like $190 billion.

So it is no wonder that APEC in August this year recommended stronger working partnerships between the tourism and health sectors.

In September this year, Access Economics evaluated the Australian medical research sector for the Australian Society of Medical Research.

This evaluation highlighted the remarkable returns achieved on medical research dollars, the high profile of Australian scientists, and observed that Australia commanded 4 per cent of the World Health Organisation’s designated Collaborating Centres.

This itself testifies to our great ability in this area of science.

Queensland’s geographic position has for a long time given it—and its medical research community—a very practical interest in tropical medicine and tropical preventive health medicine.

The far-sighted collaboration of the Queensland Institute of Medical Research and the University of Queensland in creating the Australian Centre for International and Tropical Health and Nutrition deserves recognition.

Health and development in low-income countries are overlapping elements of the same problem—88 per cent of the world’s low income countries are in the tropics and they contain 95 per cent of the world’s low income population.

The World Health Organisation, the World Bank and AusAID are among the global agencies that have recognised the link between health, environment and poverty.

Part of ACITHN’s mandate is to help Australia meet its international health obligations in public health.

In this regard I can highlight their status as a WHO Collaborating Centre, their linkage within the regional SEAMEO system, their service on global panels and their networking par excellence to 64 key international institutions.

Some 36 per cent of research students with ACITHN come from overseas.
Both ACITHN partners are also heavily involved in indigenous health. Recently they were part of a successful bid with the Menzies School of Medical Research in Darwin for a Cooperative Research Centre in Aboriginal Health.

Professor Kay, as director of the Australian Centre for International and Tropical Health and Nutrition and head of the Mosquito Control Laboratory at QIMR, is the architect of world-first eradication of dengue fever mosquitoes in Vietnam. This effort has, so far, totally protected nearly 400,000 people, especially children, from the potentially fatal form of the disease, dengue haemorrhagic fever, which ravages 46 countries.

A deputy director of the Centre has spearheaded the long-term development of an appropriate health workforce in Papua New Guinea.

The issue of the moment is the sustainability of these efforts, and that comes down, as it always does, to money.

While the NHMRC budget has been doubled under the by the Coalition, the mandate of the NHMRC is not international and tropical health research.

From this perspective, then, support of our international and tropical public health efforts of true national centres such as ACITHN is precarious.

There are fears that the 2004 future funding review may not take full account of these growing needs because of competing funding priorities at home.

Australia’s investment in PHERP is around $14 million a year for 17 centres.

It is crucial to Australian health, our regional standing—and to regional prosperity and hence ultimately our own security.

The Howard Government made the decision to double the NHMRC budget over a five-year period up to 2005-2006.

This was in recognition of Australia’s wonderful record in medical research and the great economic returns it brings.

Our world-class effort in combating and preventing tropical disease also deserves the highest recognition and appropriate funding.

I would like to conclude my remarks in this adjournment speech by making some references to a pleasant duty I performed for the Minister for the Arts and Sport, my colleague Senator Kemp, in Brisbane on Sunday.

On the minister’s behalf, I presented the 2003 Ros Bower Award to community art activist Neal Price, executive director of Access Arts Incorporated in New Farm, Brisbane.

Neal Price is a fine recipient of this award, which commemorates Rosalie Bower, who fought so hard to win recognition and funding for community arts.

We proudly claim him as a Queenslander, because like many other Australians, he chose to make our State his home.

He arrived in the 1980s and from 1983 to 1996 was Nursing Artist in Residence at The Prince Charles Hospital in Brisbane.

In that job, he initiated and was coordinator of the hospital’s creative arts programme for mental health, residential care and physical disabilities.

He developed community festivals, murals, residencies, reminiscence and oral history in the caring context within which he worked.

From 1999 to 2002 he was a board member and deputy chair of the Community Cultural Development Board of the Australia Council for the Arts and this year was a recipient of the Centenary Medal.

Access Arts was chosen to host the first Australian staging of the Asia Pacific Wataboshi Festival, which wound up at the Brisbane Powerhouse on Sunday.

It came to Brisbane, I have no doubt, because of Neal Price’s international bridge-building that has been another tremendous element of his life’s work.

The Ros Bower Memorial Award was first awarded in 1981.

It was established by the Australia Council’s Community Cultural Development Board and the Ros Bower Memorial Trust.

It is designed to recognise distinguished effort in fostering and furthering the philosophies and principles espoused by Rosalie Bower, founding
director of the Community Arts Board, the precursor to the CCDB.

We all know, without even having to think about it, that without community based arts our towns and cities—and even more so, our special communities such as those served so admirably by Neal Price—would be poorer places.

I think we might all agree that art, of whatever genre, is inspired self-expression.

This is something that also has a practical side and it was in that which Ros Bowers succeeded so well.

For evidence that she did we need look no further than the Community Cultural Development Board established to fund the development of community arts, to advise the Federal Government on their value, and to advocate on their behalf.

For evidence that her philosophy has lived on since her death in 1980 we need look no further than the roll-call of winners of the Ros Bower Award—men and women who have shown outstanding dedication and commitment to community cultural development over the past 22 years.

**Senate adjourned at 3.01 p.m.**