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SITTING DAYS—2003

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RADIO BROADCASTS
Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

- **CANBERRA** 1440 AM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
- **BRISBANE** 936 AM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 729 AM
- **DARWIN** 102.5 FM
FORTIETH PARLIAMENT
FIRST SESSION—SIXTH PERIOD

Governor-General

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

Senate Officeholders

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

Senate Party Leaders

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

Printed by authority of the Senate
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

(2) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Warwick Raymond Parer, resigned.

(3) Chosen by the Parliament of South Australia to fill a casual vacancy vice John Woodley, resigned.

(4) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Andrew Quirke, resigned.

(5) Appointed by the Governor of Tasmania to fill a casual vacancy vice Hon. Brian Francis Gibson AM, resigned.

(6) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.

(7) Chosen by the Legislative Assembly of the Australian Capital Territory to fill a casual vacancy vice Hon. Margaret Reid, resigned.

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

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

Prime Minister
Minister for Transport and Regional Services and Deputy Prime Minister
Treasurer
Minister for Trade
Minister for Foreign Affairs
Minister for Defence and Leader of the Government in the Senate
Minister for Finance and Administration and Deputy Leader of the Government in the Senate
Minister for Health and Ageing and Leader of the House
Attorney-General
Minister for the Environment and Heritage and Vice-President of the Executive Council
Minister for Communications, Information Technology and the Arts
Minister for Agriculture, Fisheries and Forestry
Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation
Minister for Education, Science and Training
Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women
Minister for Industry, Tourism and Resources
Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service

The Hon. John Winston Howard MP
The Hon. John Duncan Anderson MP
The Hon. Peter Howard Costello MP
The Hon. Mark Anthony James Vaile MP
The Hon. Alexander John Gosse Downer MP
Senator the Hon. Robert Murray Hill
Senator the Hon. Nicholas Hugh Minchin
The Hon. Anthony John Abbott MP
The Hon. Philip Maxwell Ruddock MP
The Hon. Dr David Alistair Kemp MP
The Hon. Daryl Robert Williams AM, QC, MP
The Hon. Warren Errol Truss MP
Senator the Hon. Amanda Eloise Vanstone
The Hon. Dr Brendan John Nelson MP
Senator the Hon. Kay Christine Lesley Patterson
The Hon. Ian Elgin Macfarlane MP
The Hon. Kevin James Andrews MP

(The above ministers constitute the cabinet)
HOWARD MINISTRY—continued

Minister for Justice and Customs
Senator the Hon. Christopher Martin Ellison
Minister for Fisheries, Forestry and Conservation
Senator the Hon. Ian Douglas Macdonald
Minister for the Arts and Sport
Senator the Hon. Charles Roderick Kemp
Minister for Small Business and Tourism
The Hon. Joseph Benedict Hockey MP
Minister for Science and Deputy Leader of the House
The Hon. Peter John McGauran MP
Minister for Local Government, Territories and Roads and Manager of Government Business in the Senate
Senator the Hon. Ian Campbell
Minister for Children and Youth Affairs
The Hon. Lawrence James Anthony MP
Minister for Employment Services and Minister Assisting the Minister for Defence
The Hon. Malcolm Thomas Brough MP
Special Minister of State
Senator the Hon. Eric Abetz
Minister for Veterans’ Affairs
The Hon. Danna Sue Vale MP
Minister for Revenue and Assistant Treasurer
Senator the Hon. Helen Lloyd Coonan
Minister for Ageing
The Hon. Julie Isabel Bishop MP
Minister for Citizenship and Multicultural Affairs and Minister Assisting the Prime Minister
The Hon. Gary Douglas Hardgrave MP
Parliamentary Secretary to the Prime Minister
The Hon. Jacqueline Marie Kelly MP
Parliamentary Secretary to the Minister for Transport and Regional Services and Parliamentary Secretary to the Minister for Trade
The Hon. De-Anne Margaret Kelly
Parliamentary Secretary to the Treasurer
The Hon. Ross Alexander Cameron MP
Parliamentary Secretary to the Minister for Foreign Affairs
The Hon. Christine Ann Gallus MP
Parliamentary Secretary to the Minister for Defence
The Hon. Frances Esther Bailey MP
Parliamentary Secretary to the Minister for the Environment and Heritage
The Hon. Dr Sharman Nancy Stone MP
Parliamentary Secretary to the Minister for Finance and Administration
The Hon. Peter Neil Slipper MP
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry
Senator the Hon. Judith Mary Troeth
Parliamentary Secretary to the Minister for Family and Community Services
The Hon. Christopher Maurice Pyne
Parliamentary Secretary to the Minister for Health and Ageing
The Hon. Patricia Mary Worth MP
Parliamentary Secretary to the Minister for Industry, Tourism and Resources
The Hon. Warren George Entsch MP
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<tr>
<td>Leader of the Opposition</td>
<td>The Hon. Simon Findlay Crean MP</td>
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<td>Deputy Leader of the Opposition and Shadow Minister for Employment, Education and Training and Science</td>
<td>Jennifer Louise Macklin MP</td>
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<tr>
<td>Leader of the Opposition in the Senate, Shadow Special Minister of State and Shadow Minister for Home Affairs</td>
<td>Senator the Hon. John Philip Faulkner</td>
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<tr>
<td>Deputy Leader of the Opposition in the Senate and Shadow Minister for Trade, Corporate Governance, Financial Services and Small Business</td>
<td>Senator Stephen Michael Conroy</td>
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<tr>
<td>Shadow Minister for Employment Services and Training</td>
<td>Anthony Norman Albanese MP</td>
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<tr>
<td>Shadow Minister for Veterans’ Affairs and Shadow Minister for Customs</td>
<td>Senator Thomas Mark Bishop</td>
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<tr>
<td>Shadow Minister for Children and Youth</td>
<td>Senator Jacinta Mary Ann Collins</td>
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<td>Shadow Minister for Industry, Innovation, Science and Research and Shadow Minister for the Public Service</td>
<td>Senator Kim John Carr</td>
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<td>David Alexander Cox MP</td>
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<td>Shadow Minister for Ageing and Seniors, Assisting the Shadow Minister for Disabilities</td>
<td>Annette Louise Ellis MP</td>
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<td>Shadow Minister for Workplace Relations</td>
<td>Craig Anthony Emerson MP</td>
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<td>Shadow Minister for Citizenship and Multicultural Affairs</td>
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<td>Joel Andrew Fitzgibbon MP</td>
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<td>Shadow Minister for Health and Deputy Manager of Opposition Business</td>
<td>Julia Eileen Gillard MP</td>
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<td>Shadow Minister for Consumer Protection and Consumer Health</td>
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<td>Senator Kate Alexandra Lundy</td>
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<td>Shadow Attorney-General and Shadow Minister for Justice and Community Security</td>
<td>Robert Bruce McClelland MP</td>
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<td>Gavan Michael O’Connor MP</td>
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<td>Nicola Louise Roxon MP</td>
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Monday, 1 December 2003

The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 p.m., and read prayers.

COMMITTEES
Privileges Committee

Reference

The PRESIDENT (12.30 p.m.)—The Senate Rural and Regional Affairs and Transport Legislation Committee, by letter dated 25 November 2003, has raised a matter of privilege under standing order 81. The matter relates to a possible improper interference with a witness. Evidence available to the committee indicates that an attempt may have been made by a person improperly to influence a witness before the committee in respect of the witness’s evidence and a threat made to impose a penalty or injury on other persons in respect of the witness’s evidence.

I am required by the procedures of the Senate to consider whether a motion to refer the matter to the Privileges Committee should have precedence, having regard to specified criteria. The manner in which those criteria are applied has been indicated in past presidential determinations under standing order 81. The matter clearly meets the criteria I am required to consider. The Senate has always taken extremely seriously any suggestion that a witness before a committee has been interfered with in any way, as past cases considered by the Senate and the Privileges Committee indicate. I therefore determine that a motion to refer the matter to the Privileges Committee may have precedence. I table the correspondence from the committee and attachments. A notice of motion to refer the matter to the Privileges Committee may now be given.

Senator FERRIS (South Australia) (12.31 p.m.)—At the request of Senator Heffernan, I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Committee of Privileges:

Having regard to the material submitted to the President by the Rural and Regional Affairs and Transport Legislation Committee, whether there was any attempt improperly to interfere with a witness before the committee, and whether any contempt of the Senate was committed in that regard.

HIGHER EDUCATION SUPPORT BILL 2003
HIGHER EDUCATION SUPPORT (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003

Second Reading

Debate resumed from 25 November, on motion by Senator Ian Campbell:

That these bills be now read a second time:

upon which Senator Carr had moved by way of an amendment:

“but the Senate deplores the fact that important features of the nation’s higher education system are being fundamentally reshaped and redefined by the Higher Education Support Bill 2003 and that such a radical assault of the fundamentals of the system was not foreshadowed nor discussed during the review process, and notes:

(a) further shifting of the cost of university education onto students and their families by allowing Higher Education Contribution Scheme to increase by 30 per cent and doubling the number of full-fee paying places;

(b) that the education sector and the broader community do not support discarding university autonomy and academic freedom;

(c) that these bills will initiate a regime which will shift costs to students, stifle
student choice and impose a heavy burden on families; and

(d) that these bills will deepen inequalities in society, and undermine economic and social prosperity”.

Senator MURPHY (Tasmania) (12.33 p.m.)—The Higher Education Support Bill 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003 are very important pieces of legislation. I think it has been said that it is the most significant higher education legislation since the Dawkins reforms in the late 1980s and early 1990s. For that reason we must give it serious consideration. In my position, it is a very difficult issue to deal with. We have been engaged in discussion with the government, along with all of the interested parties. Certainly from my point of view we take very seriously the propositions that have been put to us.

May I say at the outset that the measure which proposes to introduce voluntary student unionism in universities will be opposed by me. It does a disservice to universities, so I would not support it under any circumstances. Likewise, I say at the outset that I will oppose the measures which would link industrial relations outcomes to university funding—firstly, because I think they are unnecessary; secondly, because I do not think they will achieve anything; and, thirdly, because I think that they may well be in breach of the Industrial Relations Act and international agreements to which the government of Australia is a party. In saying that they may breach the Industrial Relations Act, I draw to the government’s attention section 170NC, division 9 of the act, which refers to the prohibition of coercion in relation to agreements. It would seem to me that it is possible for the government to endeavour to enlist a form of coercion for employers in universities in regard to employees in universities. That is one of the reasons that I will not support the measure. I do not believe that it will achieve anything, having regard to the wording that is proposed.

What does it do in terms of delivering education in this country? It does not do anything. Does it improve the operation of universities? No. Most employees of universities are probably on individual contracts in one form or another and there are significant outcomes in terms of the way universities have operated industrially. So I cannot see any point in changing those circumstances. For that reason I will be opposing what the government is proposing to do in that respect.

There are other very significant issues. One of those issues is indexation. The very reason we are dealing with this legislation in part is the decline in university funding over the years as a result of an inappropriate and failing indexation model that has been applied to funding for higher education.

I note some very significant statements that have been made in respect of government members, ministers and, indeed, the Prime Minister insofar as the importance of higher education to this country’s economy in the future is concerned. I welcome those statements. But, if we are to secure our higher education institutions in this country, it is important that we have an appropriate indexation model for them. For that reason, if the second reading vote is carried and the bill goes into committee, I will propose an amendment to allow for a review of indexation to be conducted and completed by March of next year and to ensure that the recommendations arising from it will be implemented through legislation by the end of June next year.

It is inappropriate for us to wait for a longer period of time to do that. It is worth noting that, in the higher education funding
report of March 1999, the government said in respect of indexation:

Indexation arrangements for the salary components will be reviewed when a new wage cost index, which removes the effect of productivity based wage increases, is developed by the Australian Bureau of Statistics.

I understand they did that. Therefore, any review or reconsideration of this will not take very long. The ABS could recommend very quickly the type and form of indexation that should be applied here. If the government, as they have said time and again, are committed to appropriate funding for universities then we will implement it. It will not be good enough to say that we will have a review in 2005 or some other time. It is appropriate to do it now. In fact, it should already have been done. We would not be looking at a 30 per cent increase in HECS fees if we had appropriate funding in place. That is a very important aspect of what I will be pursuing in terms of amending funding arrangements. It is important that no university is worse off under the new funding proposals. It is a matter that I will certainly pursue to ensure that no university is worse off.

There is a proposal in the legislation that would see an interest rate applied to FEE-HELP in particular. Again, I am opposed to this because I think it is a further cost burden to students, so I am not of a mind to support this. In fact, I will not support real interest applying to loans. The 30 per cent HECS increase is also very strongly linked to the question of indexation. You cannot keep loading these costs onto students. It just is not going to work, particularly for students who come from lower socioeconomic backgrounds. In my own state that situation is a big enough problem in itself generally. Insofar as increases in HECS fees are concerned, it is just not good enough to keep lumping increasing education costs onto students, because we really have not got an appropriate indexation model in place for the public funding of universities. My independent colleagues and I have raised many of these matters with the government and we are still awaiting some response on many of these issues.

The government’s lifelong learning proposal to limit learning entitlement to five years is another matter that we have serious difficulties with. There are many cases where there is a need for people who have graduated to further their learning. It is something the government have failed to take account of. The number of scholarships was another area that I have serious concerns about. Although the government have increased the number of scholarships by a significant amount and has made additional funds available—I congratulate the minister on many of the steps he has taken thus far—we still have some way to go. There are problems with regard to scholarships in that a student can get a scholarship, and if they earn over a certain amount of money per week it affects their social security entitlement through Youth Allowance. It would seem that is a very poor approach to take.

Along with my colleagues, I will be seeking to address some of those matters. It is really a question of how far the government is prepared to go as to whether or not we end up with legislation that is fairer and that leads to the type of higher education system that this country deserves. There are some fundamental issues here, and we are dealing with legislation that is going to set the scene for higher education in this country for the long term. We really have one shot at it. Therefore, we should do whatever we can to get it right. It is simply not going to be good enough to have a half-baked pie here.
With regard to progressing this legislation, it will be very much in the government’s court as to how we proceed, how we progress and how it responds to the issues that are raised here, not just by me but by other senators—by the Democrats, the Labor Party and the Greens. There are a whole range of issues that will be raised. We hope that, if we are to progress this legislation at all this year, we do so in a positive way and that the government is able to bring forward arguments in terms of some of the matters that have been raised with it. These are issues such as the HECS increases, indexation, interest charges and scholarships. Also, in terms of Indigenous participation, I have raised with the minister the uncertainties in respect of Batchelor College in the Northern Territory and I have noted that the minister has moved to provide additional funding for Batchelor College, as he has for the Australian Maritime College in Launceston, in my state.

But we need to have a clear understanding of exactly what is being proposed. We need to ensure in respect of Indigenous participation in this country that they are given every opportunity, because for many Indigenous people living in what are sometimes the remotest areas in this country, it is important that they are funded to the degree that we provide what I would think of as an equal opportunity to those people who live in the urban areas of this country. It is so important to ensure that the Indigenous population of this country are given those opportunities.

It is not my intention to speak for a great length of time. I want to say that I, from my point of view as an Independent, will be waiting to see how the minister responds to the issues that have been raised with him. I will look at the issues that are raised by other senators, regardless of which party they belong to in this chamber, if and when we get to the Committee of the Whole stage. As I said at the outset, this is very important legislation. It is legislation that is going to affect the way that higher education is conducted, funded and operated in this country in the future. It is important that we get it right.


Leave granted.

Senator O’Brien’s incorporated speech read as follows—


Article 26 of the Universal Declaration of Human Rights provides that:

“Everyone has the right to education.”

And, pertinent to this Bill, it also provides that:

“Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

These Bills fly in the face of the Universal Declaration of Human Rights and the Australian ethos of a “fair go”.

The changes to Australia’s education system proposed by these bills renege on the Prime Minister’s contract with the group once known as ‘Howard’s Battlers’—now known, of course, as Howard’s ‘Forgotten People’.

On behalf of the bafflers—the people of western Sydney, Melbourne’s west, and regional and rural areas nationwide, including northern Tasmania—Labor firmly opposes these Bills in their current form.

If passed, the measures contained in these bills would make higher education unattainable for many Australians. They would further entrench the growing divide between urban rich and poor over which the
Howard Government has presided, and widen the already gaping ‘city-country’ divide.

In relation to these bills, the government has demonstrated its preparedness to use the future of thousands of Australian students as a gun held at the heads of Vice Chancellors.

For what purpose? Regrettably, no greater purpose than the pursuit of the Coalition’s anti-worker, anti-union, and ultimately anti-education, ideology.

From my reading of the weekend papers, Dr Nelson has apparently uncoupled core funding from industrial relations—at least to some extent.

We do of course await the amendments that will make this a reality.

Regardless, it is outrageous that this Government would even contemplate linking educational funding with its industrial relations zealotry.

The Prime Minister has been prepared to mislead the Australian people over the Iraq war, “Children Overboard” and his own shady deals with his mates on industry assistance.

Now we see Mr Howard engaged in the ultimate betrayal.

In their current form these Bills all but guarantee that the sons and daughters of the ‘Howard bafflers’—those who have delivered him the harbourside life at Kirribilli House—will never receive a higher education.

And as a result of their inability to access higher education, many of these sons and daughters will not realise their full potential.

It comes as no surprise to this side of the House that the city centric Liberal Party has such little regard for bafflers and regional Australians.

Once upon a time it would have been a surprise to see the National Party sell out its constituency on a matter as important education, but those days are long gone.

Like the table from their party room, the National Party’s concern for rural and regional Australia is a remnant from the past, much more comfortable down the hill at Old Parliament House than here on Capital Hill.

The three National Party Senators will doubtless support the Bills in this place, just as their colleagues in the other place assented to their passage.

But thus far, senior Nationals have been resolutely mute on this legislation.

I note from a glance at the Hansard that in the other place the Leader of the National Party failed to get to his feet when these Bills came on.

Mr Vaile and Mr Truss were likewise mute in the debate—whether it was embarrassment, or sloth, that prevented them from joining the debate, I do not know.

I do know that rural and regional Australians will hold them to account for this latest betrayal.

Especially when rural and regional Australians understand that National Party representatives in this Parliament have themselves benefited from access to higher education.

Before this debate I took the liberty of examining the educational qualifications of the federal parliamentary National Party, a task that—given their meagre presence in this Parliament—did not take me long.

According to the parliamentary library, the National Party Leader, Mr Anderson, holds an MA—I presume a Master of Arts degree from the University of Sydney.

The Deputy Leader, Peter McGauran, holds a Bachelor of Laws and a Bachelor of Arts degree from the University of Melbourne.

The Minister for Children and Youth Affairs, Mr Anthony, holds a Bachelor of Commerce degree from the University of New South Wales.

The Member for Dawson, Ms Kelly, holds a “BE”—I assume this is a Bachelor of Economics degree from the University of Queensland.

The Member for Mallee, Mr Forrest, travelled to Scotland for his Master of Science degree and obtained a Bachelor of Education at the University of Melbourne. He has also been a lecturer at the Ballarat College of Advanced Education in regional Victoria.

The Member for Cowper, Mr Hartsuyker, holds a Bachelor of Commerce degree from the University of Newcastle.
In this chamber, Senator Sandy Macdonald holds a Bachelor of Laws from the University of Sydney.

Senator McGauran holds a Bachelor of Economics degree from the Treasurer’s alma mater Monash University.

I might say it is noteworthy, and probably not entirely coincidental, that Senator McGauran will support legislation that would invite universities to place as much weight on a student’s financial standing as their intellectual standing.

On the matter of rural and regional Victorians’ educational needs, Senator McGauran simply has no idea.

Unlike a small number of his National Party colleagues, he is based in the CBD of one of Australia’s largest cities—though, to be fair, he probably can see western Victorian from the top storey of his office block at the Paris end of Collins Street.

Thanks to the Howard Government, each year 20,000 Australians miss out on a place at university.

These are people who are qualified, capable and motivated to undertake university education. Many of them apply for teaching and nursing places, and many of them live—and, importantly, want to work—in rural and regional Australia.

Mr Anderson told the National Party federal conference in October that he was—quote: “...extremely concerned to learn... that primary and secondary students in country schools are falling behind in maths and science.” He also said—quote: “These subjects are the keys to any career based on high technology—including ... that famous knowledge-based industry which is sometimes dismissed too readily, agriculture.”

Astutely, Mr Anderson observed that part of the problem is—quote: “...the growing shortage of suitably qualified science and maths teachers in regional areas.”

Unlike some of his city-based National Party counterparts, Mr Anderson knows that if you want to recruit teachers, doctors, veterinarians and nurses to work in rural and regional Australia, the best place to start is rural and regional Australia.

After they are trained these graduates tend to go back to their roots, to what they know. I’m sure Mr Anderson understands this, so the question has to be asked—why does the National Party Leader support a package that will narrow educational opportunities for students in rural and regional Australia.

Students from the bush face the extra expense of renting accommodation in a major city or regional centre to pursue their education.

Under Labor’s policy, these students would have access to $70.5 million in rental assistance. The Howard government is offering wholly inadequate accommodation scholarships.

Why does the National Party support this package?

Why does the National Party support a package that offers no postgraduate nursing places?

Why doesn’t the party support Labor’s plan to offer 500 such places and improve health care in the bush?

The answer is, even if National Party Members and Senator wanted a better deal for rural and regional Australia, they carry such little influence in government they wouldn’t get it.

Then again, they seem satisfied with their white cars and fancy titles.

If only Ms Kelly was as quick to negotiate an impasse to sugar funding as she was to add the title Honourable to her letterhead, Mr Truss’ $60 million in sugar reform funding would have been delivered months ago.

As the Shadow Minister for Primary Industries, I am deeply concerned about the training of rural veterinarians.

It’s a concern shared by my many rural and regional Labor colleagues, including, in this chamber, Country Labor Senator Stephens and, in the other place, the Member for Braddon and Parliamentary Secretary for Primary Industries, Mr Sidebottom, Member for Capricornia and representative of some of Australia’s largest beef producers, Ms Livermore, and the hardworking Vic-
torian Members for McMillan, Mr Zahra, and Ballarat, Ms King.

We know a full fee veterinarian course costs somewhere in the order of $144,000, and we understand that for rural students from average backgrounds, the payment of that sort of fee for access is out of the question.

I know there are members opposite who think that’s not out of the question at all—after all, it’s merely the equivalent to a new Range Rover or two.

But it’s the students who drive Datsun 120Ys—or can’t afford a car at all—about whom this Parliament should be most concerned.

Because the Howard government is forcing universities to drastically cut HECS places, many potential vet students will miss out, including many rural and regional students who would, if given the opportunity, narrow the growing gap in rural vet services.

Many students will be forced to choose another career or abandon university altogether.

Some may choose the unenviable option of loading themselves and their families with massive debt—debt they will long carry into adult life.

For those students who take the debt road, when they eventually graduate they are likely to choose urban small animal practice rather than rural livestock practice simply because their earning capacity in the city is higher.

And when you start your working life with a debt of around $150,000 earning capacity is everything.

Another matter of concern in these Bills is the Howard Government’s attempt to link core university funding with the government’s industrial relations objectives.

This government has shown itself prepared to use $400 million in university funding to blackmail universities into implementing the government’s own anti-union agenda.

Universities that do not abide by this policy risk their funding.

I described this earlier as a gun held to the head of the Vice Chancellors.

But that’s not quite right—the barrel of the gun is aimed at Australian families threatened with reduced educational opportunities to satiate the insatiable appetite of this government for industrial disharmony.

Like most other children of Senators and Members, my daughter will get the opportunities she deserves in higher education.

It’s everyone else’s children I’m worried about.

Recently, my staff accompanied the Member for Bass, Ms O’Byrne, to a visit to South George Town Primary School, in northern Tasmania, for the opening of a student art exhibition.

The theme of the exhibition was ‘walking in other people’s shoes’.

Consistent with the theme, students used various art forms to depict life through another’s eyes.

I wish some of those opposite had been there because they might have learnt something important—perhaps if they had gone, the next time a refugee family seeks asylum on Australian shores, their first instinct might not be the excision of Australian territory or the incarceration of their children in a detention centre.

The students at South George Town Primary School deserve the same educational opportunities as all other Australians—not the limited opportunities on offer in this legislative proposal.

As regional Australians, they deserve the opportunity to make a contribution to resolving one of Australia’s biggest environmental and agricultural challenges—sustainable water use.

As an example of the contribution of education to Australian agriculture, I point to the rice industry.

This industry has made massive strides in developing crop varieties and management practices leading to more efficient water use, leading, in turn, to increased profitability for growers and reduced environmental impact.

These advances have been largely driven by knowledge—qualified Australians, working in Australia, with access to Australian research facilities.

Five billion dollars in university funding cuts delivered by the Howard Government since 1996 has had a significant impact on Australian education.
I understand one report has found that 61.5 per cent of academics have lost researchers to overseas universities in the last five years. Australia is losing its skilled people to overseas institutions.

Putting higher education out of reach of more Australians is not the way to reverse this trend. Nor is forcing universities to implement an industrial relations program that has nothing to do with education and everything to do with ideology.

There is an alternative, and that’s Labor’s plan to restore equity to Australia’s university system. Labor will not support measures that increase fees for Australian students and their families.

Instead, Labor will invest $2.34 billion in Australia’s universities and TAFEs to create 20,000 new full and part time university places and 20,000 new full and part time TAFE places every year by 2008.

To help us meet the challenges of the present and the future, Labor will establish 300 post-doctoral fellowships to keep Australian talent at home.

Labor will ensure that kids in lower income outer urban areas and regional Australia get a fair go at university by restoring merit as the only criterion for getting a university place.

Labor will abolish full fees for Australian undergraduates and the real interest rate on postgraduate loans.

Labor will not use core university funding to blackmail universities into compliance with Liberal Party IR policies.

To help get medical skills and services back into the bush, Labor will fund an additional 1,100 new commencing undergraduate nursing places and 500 additional new full-time HECS-funded postgraduate nursing places every year from 2005.

Labor will also fund an extra 1,700 new commencing undergraduate teaching places and 500 additional new full-time HECS-funded postgraduate teacher education places every year from 2005.

That’s the Labor alternative.

It’s the alternative Australia needs after seven long years of this government’s regressive education program—a program that has seen opportunities diminish as the cost of education has risen.

In their current form, the Bills before the Senate do not deserve the support of the Senate.

Senator HARRIS (Queensland) (12.48 p.m.)—I rise to comment on the Higher Education Support Bill 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003. I want to commence my comments by welcoming those people who are accessing the parliamentary live broadcast now. There are students, academics and university administrators who have participated in this process.

I believe that, for the first time substantially, to my knowledge, they will be participating in the debate online as this debate is occurring in the chamber. Over the course of this debate, constituents from right across Australia have been in touch with me by email. It is interesting to note that over the weekend alone, I have received an additional 900 emails, predominantly in relation to the higher education legislation.

The information that I will be presenting has been gathered not from government briefings or sectional interests but from a broad cross-section of the higher education sector and, above all, from Queensland voters. My contribution and One Nation’s amendments to this legislation are an expression of the wishes of the Queensland people. They are not party political interests, they are not influenced by the WTO free trade agendas or corporate pressures; they are based purely on responding not only to the people of Queensland but to people right across Australia.

I am pleased to acknowledge that the government has moved substantially from its original position, largely in response to the vice-chancellors and their committees, the academic staff, postgraduate students, other students and also those students who will
enter into higher education in the future. The government to a large degree has taken the wishes of all those people into consideration.

Fundamentally, the legislation as it stood originally was a threat to our robust and quality higher education systems. The legislation was about market dominance, liberalisation of education and privatisation of universities. It was about forcing universities to look at the bottom line, rather than making decisions based on the best outcome for both the universities and the students.

I want to speak briefly on some of those reforms that the government is hoping to introduce via this legislation. The Higher Education Contribution Scheme, HECS, fees will increase by up to 30 per cent. As a result of that, a degree in medicine, dentistry or law at one of Australia’s prestige universities could, quite conceivably, end up costing up to $150,000. The proportion of university places open to full fee paying students will be doubled, from 25 to 50 per cent. There will be more access for those that can afford to pay for their education.

There will be a five-year cut-off for students in government supported places, a move designed to crack down on students taking ‘too long’ to complete their degrees. I believe that is one area in which the government has shown willingness to move. One Nation’s preferred position is that there ought not be any charges for the first degree. In supporting these students and supporting our universities, the government, in providing a first degree totally free, would be making an investment in our economic future.

The Higher Education Loan Program, HELP, for fee paying students at public and some private universities will impose commercial-style conditions for student loans with interest rates up to 6.5 per cent. We believe that the same rates could also be levied on HECS surcharges. That would result in our young people, our students, being burdened with a debt quite conceivably comparable to a mortgage on their house—before they even commence their working life.

The original package would have provided $1.5 billion for universities over four years. About half of that $1.5 billion was tied to workplace and administrative reforms. For example, $404 million in government money was contingent on universities agreeing to implement industrial reforms, including measures to push academics into individual employment contracts. One Nation believes that the government has listened on this issue and will eventually, under pressure, revert back to their original commitments contained in the document *Our universities: backing Australia’s future*. This is a positive step in accommodating One Nation’s concerns and clearly shows the government’s willingness to compromise.

Then we need to look at the influence of free trade on higher education. This is a concern that One Nation has been speaking of for some considerable time, particularly in relation to the GATS treaty. GATS is the General Agreement on Trade in Services. One Nation has a difficulty with the terminology in that treaty. To be excluded, a service cannot be provided by a private entity. As we know, right through our education system, from primary school to secondary school and university, we have the equivalent of our government provided services and we have private services. The section on the objects and definitions of GATS says that, if a service is provided by a private provider, it is not excluded from the GATS process. That is a real concern of One Nation in relation to higher education and WTO treaties. What we are seeing in this legislation is a push towards deregulation and liberalisation. It is part of a worldwide phenomenon within education and it is being propelled by the World Trade Organisation.
Let me digress for a minute and point out some of the reforms that the Blair Labour government wants to introduce into the tertiary education sector in the United Kingdom. A British student’s ability to take up university study, and even their choice of course and college, will be determined by their ability to pay. The UK government intends to deregulate higher education and allow universities to set their own level of tuition fees. The Blair government’s decision means that tuition fees will be raised above their current £1,000 per annum limit and will be able to go up to £3,000 per year, with payment deferred until graduation. After a three-year course, on top of some £9,000 in fees, many British students will owe between £10,000 and £40,000, incurred during their time at university. They will be required to begin to repay the full amount owing upon graduation, at a rate of nine per cent of their total earnings over £15,000 per annum. Does the situation in Britain sound familiar? Yes, it does. Quite honestly, this sort of process is occurring across the globe, under both conservative liberal governments and socialist labour governments. The agenda is being driven by the same international institutions.

As I said earlier, the Australian government’s education agenda is being driven by the WTO and the General Agreement on Trade in Services. The idea is that, by increasing competition and providing less funding, public services will shape up and become more efficient, lower their prices and have better-quality services. In the wonderful world of liberal economic theory, it sounds nice, but we all know that that is where it ends. It is theory, not reality.

Here in Australia, we are now paying more tax than ever before. With the impost of the GST, over $80 billion has been collected since 2000. Yet we are being asked to put our hands in our pockets and fund our own education and health to a greater extent than ever before. Yes, this is the grim reality of neoliberal economic theory—the user pays principle.

The coalition are not guarding the goalposts for our students; they are moving them in response to pressure from the WTO. To look at some of the issues that have been raised by some of both the universities and the students, I quote from a letter from the University of Western University:

As I said then, the potential impact on UWS is devastating. The best outcome for us if there is no change to the package is a loss of $7.2M over the three years. The worst case, if we don’t qualify for the 2.5% extra funding each year is a loss of over $20M for the three years. If you add to this rising costs the picture is very bleak, particularly as we know that the transitional funding will only cover part of the shortfall under the best case scenario. For a developing University such as UWS, serving a large outer urban region characterised by a lower level of participation in higher education, the reforms represent a significant assault on our future viability and plans.

It goes on to say:

If there is no change we will be forced to consider charging our students the 30% premium on HECS, closing courses or campuses and cutting costs drastically. This would have a significant impact on our staff, students and community. The promised ‘transitional funding’ assists us a little, but it is temporary and takes no account of rising costs. The University will actually therefore go backwards financially in real terms.

That letter is from Janice Reid, the Vice-Chancellor of the University of Western Sydney. That mirrors other concerns that universities have around Australia.

What are some of the unresolved issues that we have at this point in time? One of them is the additional auditing accountability that is being placed on both table A and table B universities. Table A universities are our not-for-profit universities; table B universities are in the private sector and will, as a result of this legislation, receive some public
funding. I have spoken to both those groups. It is very clear that the table A universities believe that they are already complying with similar accounting requirements in relation to their auditing and returns that they currently put in. Table B universities—that is, the private enterprise universities—see no problem with complying with what the government is asking for, because that falls within their own accounting accountability.

In relation to the auditing issues, One Nation will be requesting that the government delete the requirement for the table A universities but leave in place the additional auditing accountability for table B.

The second issue that I believe we need to resolve very clearly is representation on the governing councils of the universities. A concern was expressed to me by the University of the Sunshine Coast, where their council presently, I believe, stands at 15. If there were a reduction in that number on the governing council then the likely participants that would be removed would be student representatives and community representatives. That is another issue that we need to address very clearly as this bill progresses through the chamber.

The third issue is learning entitlements. I have spoken very clearly on this issue previously. If we look back 20 or 30 years ago, when we were in the period of our lives where we were entering the work force, it was with reasonable assuredness that we were able to select an area that we wanted to work in and then progress through that, predominantly for the rest of our working lives. That is not the case today. Our young people, as they are coming through high schools and universities, are being clearly told that they will have to come back and upskill between three and four times during their working lives. So what the government is clearly saying to the students now is: ‘Yes, we’ll fund you once in relation to your higher education, but then you are on your own.’ One Nation believes that that is not acceptable or equitable, particularly in the light that the government clearly knows that those students during their working lives are not going to be back there once or twice but in all probability will have to completely change the preferred option in which they are working at least three times during their working lives.

The other issue is where scholarships are appointed. Those scholarships are presently, for the purpose of social security, assessed as income. What is actually happening is that we have private enterprise, the universities themselves or the government themselves providing scholarships to students who are only to find that under the assessment for Youth Allowance the value of those scholarships will be subtracted. I have figures that I will raise in the committee stage of the bill.

In conclusion, with an increase in fees, the financial obstacles faced by students will be insurmountable. A first degree will cost a second mortgage. Charging higher fees to undergraduates will enable universities to pay for more prestigious lecturers, allowing them to compete more forcefully with American and western European universities. Foreign students will be charged the earth for being taught by internationally renowned academics attracted by inflated salaries, and our own students will not be able to pay. Ultimately, the arts, culture, history, politics and literature will be the sacrificial lambs. Less popular courses will be underfunded. We do not want our universities to become degree factories. The prospect of shouldering thousands of dollars worth of debt even before starting a career is guaranteed to deter many students from entering universities. One Nation is doing the right thing by assisting the government to reform and progress this agenda while at the same time making
provisions for the concerns and wishes of voters that we represent.

Senator LEES (South Australia) (1.08 p.m.)—There is now at least $1.7 billion of extra funding for our universities offered in this legislation, and I believe $1.7 billion extra is something that is worth fighting for. I do have a personal interest in this and an understanding of the pressures that university students are under, and indeed that universities and staff are under, because my husband and I have had all six of our children at university this year. I am well aware of the enormous size of lectures, the tutorials that may or may not happen and the tutorials that are so large that there is almost a roster for who can ask a question or some sort of a rota system that means that you may get to ask one on that day at a particular tutorial. Those pressures are something that I am certainly well aware of. I am very disappointed that the Labor Party, the Democrats and the Greens have walked away from this legislation at such an early stage and apparently are going to oppose the second reading, even though this is still very much a work in progress and there is still an opportunity to get this legislation passed.

At the end of the day, we still will not have enough money. We still will not have what I would like to see provided to our universities, unless of course the Treasurer takes his eye off the purse strings and we actually manage to get the extra one or two billion dollars. We are still going to fall short, but we will at least have around $1.7 billion more than we have now. Back in May this year I undertook to do everything in my power to get this extra money flowing to universities. Obviously, if the ALP feel that it is not enough, it is one of the issues that they can run on in the coming election. They can make promises about how much more they are prepared to give and what more they are prepared to do. Indeed, the Greens are more than welcome, as are the Democrats, to run on a ticket of abolishing HECS altogether. But right now we have a chance to put some $1.7 billion extra where it is urgently needed.

Australia’s 38 publicly funded universities are in desperate need of money. Both major parties have starved our universities for the past decade and more. So now we have a higher education system that is pressuring the Senate to pass this legislation, with amendments. The vice-chancellors who appeared before the Senate committee looking at the original package all urged the Senate to work on amending this legislation in an attempt to make it acceptable, and indeed the four of us are prepared to listen to their call and to keep working.

There are two main reasons universities are in the dire financial straits that they are in. The first is the lack of indexation, and this was a Labor Party decision. The current system was introduced back in the 1990s. I think the education minister was then Simon Crean. The lack of indexation has basically meant that universities have been somewhere between $500 million and $600 million a year worse off each year since 1995, when the system was put in place. The second reason is that this government, the Howard government, made substantial cuts to universities in their first term. Even though, in the package we have, indexation has been partially addressed and we have extra money, it is only guaranteed until 2007, and then we will see, if nothing else is done, universities back in limbo and back in difficulties as they are now.

The four of us have asked the government to continue working on this particular issue and to look again at indexation. We have put a number of proposals to them. Hopefully this is one of the outstanding issues that soon will be resolved, because, with proper indexation, Australian universities will be able
to face the future with some confidence. They would be able to plan and would be less likely to be forced to rely on student fees.

Since May this year, when this legislation was first announced, I have met frequently with the Australian Vice-Chancellors Committee, the National Tertiary Education Union and the National Union of Students as well as with quite a lot of individual students, including students from universities in South Australia, and individual academics. I have also gone through the thousands of emails and letters that I have received, including from many concerned citizens and from parents who have children in the latter years of high school who are hopeful that they will be able to access universities. Not once was one individual or one organisation supportive of that package in its original form.

We worked on the package with the minister and have gone through the processes of watching the vice-chancellors work actively with Minister Nelson to get a very large amount of changes, substantial amendments, to the package. But what I can say about that first ‘effort’, I guess we should call it, from the minister is that, despite all of the consultations he undertook, for which people were very grateful, the end result was not appreciated by anyone in the sector.

I am one of those who was very lucky. I had a tertiary education. Indeed, I only got one because I was able to get a teaching scholarship—a scholarship that not only made sure I did not have to pay any fees but also provided a small living allowance. I am very concerned about the level of fees Australian students are already paying and, in particular, the lack of meaningful scholarships that will allow those students from low-income backgrounds and rural areas in particular to access tertiary education. As we look at the scholarships in this package we see that means testing them is going to mean that for many of those students that are in the target group—those on Youth Allowance who are barely subsisting and need to earn a little bit extra, and those from rural areas—effectively these scholarships are worthless.

Let us just look specifically at rural students. They are not getting a fair go. The week before last I travelled to Mount Gambier in the south-east of South Australia and discussed these issues at quite a large meeting. I have had quite a few discussions with the group that has formed in Mount Gambier. These parents tell us that the costs of sending a child to university in Adelaide are frequently prohibitive—they simply cannot do it. Even without including HECS, the costs involved with living away from home—extra meal costs, phone calls, the occasional visits home et cetera—add up to about $9,000 a year. Parents are saying that in many cases they simply cannot do it. The stresses on students are enormous if they do manage to do it. Many of them return home within a matter of months, probably not even finishing the first year. Parents certainly cannot consider sending the second or third child.

I congratulate the three high schools in my old home town of Mount Gambier. When I taught there they tended to always be highly competitive. They certainly are competitive on the sporting field. But this is one of the very few issues on which I have ever known the three high schools—Grant High, Mount Gambier High and Tenison Woods College—to get together on an issue and to put a determined, unified case. They provided the evidence as to what it costs parents. They looked at the statistics and pointed out that the costs are forcing families to say to their young people, ‘We are sorry; off you go; get a job. Perhaps work for a year or a year and a half to access Youth Allowance as an independent. Right now, we certainly cannot
send you to uni.’ Unfortunately many of those students who take 15 or more months off—to earn what they have to earn to access Youth Allowance independently—never make it to university. These are issues that are not faced by kids who live in Adelaide.

Already we have the evidence. We know the participation rates in higher education for rural students are less than half those of students in metropolitan areas. Naomi Godden of the National Youth Roundtable has conducted research which shows that in Western Australia, while 54.8 of every 1,000 people in Perth participated in uni study, only 20.7 of every 1,000 people in regional areas did so. She has also found that since 1996 there has been a six per cent decrease in university participation from regional Western Australia and an eight per cent increase in participation in metropolitan Western Australia. So I say again that the scholarships and they way they are offered in this package will not fix this basic injustice.

When parents are paying $9,000 to support their children in university, a $4,000 scholarship is simply not enough. It is also an insult to tell students that if they earn extra money in a part-time job Family and Community Services will start removing their youth allowance—that is, if a student has managed to get it in the first place. Students on Youth Allowance are the very students we should be targeting and supporting with scholarships. Those who have had children at university will know what the costs are; Youth Allowance itself is not enough to live on. These students have to go out and find extra work and that in turn conflicts with the timetable for them—the times they are supposed to be attending lectures or getting assignments submitted. Students on a $4,000 scholarship and earning a little bit to top up the Youth Allowance will lose about $3,000 from their Youth Allowance. So what is the point? Giving with one hand and taking with the other is not an equity measure in my opinion.

I will move on to look at HECS. HECS was established by a Labor government so, obviously, regardless of who wins the next election HECS is here to stay. It has already been increased substantially under this government. A tertiary education is not just something that benefits the individual. I think this is something that some people are losing sight of. We as a community rely on doctors, nurses, engineers, physiotherapists, teachers et cetera. All of Australia benefits from a skilled work force and should be encouraging—indeed assisting—those young people, or indeed older Australians, who have the ability, talent and qualifications to access university. If we continue to push up the costs so that students come out with bigger and bigger debts then many of those jobs such as general practitioner will become less and less attractive. We are asking graduates from medical school to choose general practice but it is obviously a lower paid option than the specialty areas. It would be much better for students to go off and be a radiologist or a specialist who works in a hospital. They would be able to pay HECS off at many times the rate that the average GP would be able to do to get rid of the debt hanging over their head.

There is a big enough body of evidence showing now that we should not be increasing HECS and that buying a home and starting a family are issues that are influenced by the amount of debt students come out of university with. While I have said all along that I am prepared to continue to fight for what is now an extra $1.7 billion, I am yet to be convinced that the money will be shared fairly across all universities. There are still a number of institutions which I believe will continue to struggle or will be worse off under the new Commonwealth grants scheme: outer metropolitan universities, such as the
University of Western Sydney, and multi-campus universities such as the University of South Australia. There are special cases, such as the Victorian College of the Arts, which have not had issues sorted out and do not fare well under this legislation.

This whole issue is still in open and active debate with the minister. While there have been some changes—for example, for the Maritime College—and we are pleased with the progress that is being made, there is still some way to go to make sure that the very universities that deal with the largest body of disadvantaged students and the largest numbers of students who come from families where no-one has been to university before are the universities that must not, in any way, be worse off. Indeed, they need more support under this package.

Another area of concern is the whole issue of governance—basically, the issue of independence or autonomy for universities. The original bill was, in basic description, horrific. It allowed for substantial intervention from government as to how the universities were to be run. Indeed, there was to be an unprecedented level of intervention. Even though they were desperate for the money, the vice-chancellors unanimously would not move any further with the original measures in place. Aspects in this area are still under active negotiation, although I note that the vice-chancellors have done an awful lot of the work on these issues. The four Independents will continue to work in particular on the matter of Australian workplace agreements. As one vice-chancellor said to me recently, he already has some 190 professors on 120 different rates of pay. So what is the problem? We simply do not need it. How much more flexibility does the minister actually want?

The minister has raised the matter of the ‘cappuccino’ courses. I have gone looking for where these courses are offered. I had great difficulty finding any of the postgraduate courses that have caused the minister such problems or offence. It seems that TAFE has some of these but, as you look through them, you can see that they are all courses that are very much needed, are part of broader courses such as hospitality courses or courses relating to our tourism industry or are in fact PhD topics. I note here an improvement on the status quo in that the Senate and the House of Representatives will now be involved in a disallowable instrument if the minister does want to challenge any courses that are provided under HECS, but we still have some work to do on the timing of that. My view is that universities should be as independent from government as possible. I would like to add a fourth element to the separation of powers. I believe universities are the bastions of democracy. We must have free speech. If we have institutions that are able to effectively challenge the government of the day, if they so wish, or put on courses that the government may indeed find are against some of their policies or their beliefs, so be it. In the long run, it is up to students whether or not they want to do these courses.

On the decision about the second reading vote, given the progress that has been made I am reluctant to see the debate end here. I do not want to see the legislation voted down, because our universities do need the funding and we are making progress with the government. I undertook from the start of this process to listen to all the stakeholders and to try to get that extra money flowing. Basically, my aim has been, firstly, to get the maximum extra money we possibly can for the 38 universities; secondly, to minimise—hopefully to prevent, but I do not think we are going to get there—any cost increases to students; and, thirdly, to get extra support for those students we know from our research
are not getting a fair go: rural students and students from disadvantaged backgrounds where families are on very low incomes and/or where no-one has ever been to uni before. That also includes Indigenous students—there has actually been a drop in the number of Indigenous students accessing university in recent years—and some students from a non-English-speaking background.

Finally, my aim has been to minimise any intrusion on university independence. As we see universities following this debate and continuing to call for more money, I hope that we are able to work our way through to a successful third reading vote—but we are certainly not there at the moment. I hope that at the coming election we will see all parties promising more for universities. Even the extra $1.7 billion, as I said before, is not enough. Our universities have a backlog of need for structural improvements—in some cases, the complete rebuilding of facilities—and they have an urgent need for more ongoing, day-to-day funding and more money for research. There is a long list of what we need. Even with the money in this bill, we still have a considerable way to go to get up to the average OECD figure for what we put into not just our universities but also public education generally. I call on this government to think again about the amount of money that is finally going to get through to universities in this bill. In particular, I say to government that we need to think again about those disadvantaged students that the research shows us are talented and capable but at the moment are not able to get to university because of the hurdles that are put in their way.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.26 p.m.)—I would like to thank honourable senators for their contribution to the debate and commend the bills to the Senate.

Question agreed to.

Question put:

That the motion (Senator Ian Campbell's), as amended, be agreed to.

The Senate divided. [1.31 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 34
Noes............ 33
Majority........ 1

AYES

Abetz, E. Alston, R.K.R.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Cooman, H.L. Eggleston, A. *
Ellison, C.M. Ferguson, A.B.
Harradine, B. Harris, L.
Heffernan, W. Humphries, G.
Johnston, D. Kemp, C.R.
Lees, M.H. Lightfoot, P.R.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Murphy, S.M. Patterson, K.C.
Payne, M.A. Santoro, S.
Scullion, N.G. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E. Watson, J.O.W.

NOES

Allison, L.F. Bartlett, A.J.I.
Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G. *
Campbell, G. Carr, K.J.
Cherry, J.C. Collins, J.M.A.
Cook, P.F.S. Crossin, P.M.
Denman, K.J. Faulkner, J.P.
Forshaw, M.G. Greig, B.
Hogg, J.J. Hutchins, S.P.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McLucas, J.E. Moore, C.
Murray, A.J.M. Nettle, K.
O'Brien, K.W.K. Ray, R.F.
Ridgeway, A.D. Sherry, N.J.
Bills read a second time.

Ordered that consideration of these bills in Committee of the Whole be made an order of the day for a later hour.

BUSINESS

Days and Hours of Meeting

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (1.37 p.m.)—by leave—I move:

That, on Monday, 1 December 2003:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.30 pm; and

(b) the question for the adjournment of the Senate shall be proposed at 10.50 pm.

Question agreed to.

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

Second Reading

Debate resumed from 27 November, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator CARR (Victoria) (1.38 p.m.)—The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003 provides funding for capital grants to non-government schools for the next four years in such a manner as to retain funding at the 2003 levels. It also continues funding in 2004 for targeted school programs for literacy and numeracy and for educationally disadvantaged students. The bill provides yet another example of the government’s priorities when it comes to school funding. I am not talking about the one-year grants of strategic assistance for the improved student outcomes program and I am not talking about literacy and numeracy funding; I am talking about the $41.8 million over four years for non-government schools capital funding—and I emphasise that the bill provides for capital funding.

The bill does not provide additional funding for capital works in government schools across Australia. I do not doubt for a minute that many of the capital projects in the non-government schools to be funded through this bill are urgent and sorely needed. I am concerned, nonetheless, that it is in government schools that the needs are most pressing. The buildings and facilities of hundreds of public schools in this country, in virtually every state and territory, are run down. They need major refurbishment, if not total replacement. This bill does nothing to address those needs. The 70 per cent of Australian students who attend government schools will not see an extra cent of Commonwealth funding as a result of this legislation. The 30 per cent of children and young people in non-government schools will see all kinds of improvements to their school environment.

It is instructive to look at the detail of where the Commonwealth funds actually go, particularly within the government sector. Last week the Minister for Education, Science and Training, Dr Nelson, tabled the annual report on financial assistance for schools provided to the states for 2002. This year, no doubt in response to the opposition’s insistence, Dr Nelson has provided details of capital expenditure by school. That is the first time this has occurred for several years, and it proves very interesting and instructive to examine the details. When you look at government schools’ capital expenditure you
find that by far the majority of it goes to basic facilities—general purpose classrooms, toilet blocks and the like. There are some libraries; there are occasionally canteens and administrative buildings. There are upgrades and refurbishments of such facilities. All of these things are of high priority, of course, but they are no more than the essential basics of school infrastructure.

When you turn to look at the non-government school sector in this report, the contrast could not be starker. We are told by this report that the Commonwealth is funding ‘specialist classrooms, physical education facilities, music practice buildings, visual arts areas, workshops, resources areas, music rooms, three practice rooms, a technology and design complex’. We are told at another point that it is ‘two science laboratories, science preparation rooms, drama areas, audiovisual rooms, computer resource room, two seminar rooms, two airconditioning plant rooms, sports storeroom, library area, pupils and staff amenities’. Of course, there are general teaching areas and classrooms too, but I think the picture becomes clear from the examination of the report on financial assistance grants for 2002.

In some states, capital money has been sought and provided for furniture and equipment. In other words, non-government schools are installing lavish facilities at Commonwealth expense—that is, at taxpayers’ expense. The national report on schooling for 2000 tells us that in government schools $350 per student went to capital works in that year. Meanwhile, capital expenditure from all sources in independent schools averaged $1,500 per year. Students in these private schools are getting more than four times the amount of money spent on them for buildings and facilities than students in the government school system—their facilities are four times as expensive, according to the government’s calculations.

In the Catholic sector, capital expenditure for 2000 averaged $800 per student, more than twice that spent on government schools. These figures are only averages, and some government schools have excellent facilities while those in some Catholic schools need dramatic improvement, but what we see in the average figures provides a comparative indicator. These figures show where our national priorities, according to this government, lie.

We all know that at this point the government will cry with indignation. I have no doubt that the minister, in response, will be telling me that the lion’s share of government school funding comes from the states. We all know that is true. But it does not change the fact that there are deep inequalities in our national approach to school funding. It is the Commonwealth’s job to tackle inequalities in schooling and it is the Commonwealth, under this government, which is not doing that job.

The environment in which a child learns is crucial to his or her educational experience. It is crucial for educational outcomes. It may well be argued that it is crucial for social and economic outcomes and for social and economic inequalities in this society. I do not mean simply that a better science lab makes it easier to learn science or that a bigger school library contains more books; I mean that the kinds of places that our schools are sends a message to children about how we value their education and about how in the end we value them as people. It is quite clear that, in this country under this government, there are winners and losers. There are gross inequalities in our education system which this government is facilitating.

School students in government schools have no reason to believe that the Commonwealth wants to provide them with more than the basics in terms of educational facilities. Students in many private schools by contrast
know that Dr Nelson and his government want them to have the best that money can buy. It is my judgment that all students, no matter where they go to school, deserve high-quality classrooms. They deserve decent sized laboratories, sports facilities, art rooms, music facilities and computer centres. These are the things that should be funded by the Commonwealth on the basis of need, not on the basis of political expediency. That is what a Labor government would be committed to, and it would do so through a capital funding program.

We believe it is important that there be amendments to these bills. We will be proposing a series of amendments because the question of accountability is also critical in education. The report of the State Grants Act expenditure for 2002, as I have said, provides greater detail than we have seen for some years on how the Commonwealth spends money in terms of its capital program. I welcome that. It renders the program more transparent and potentially more accountable. The details provided in this report, however, reveal some disturbing facts about the apparent generosity of the government in the way in which it interprets its programs. I am disturbed by the fact that there are capital funds for items such as, to quote the report, loose furniture, travel and fees. It is said that these are to be used for teaching equipment. I am informed that these programs were not permissible under the capital programs in previous times. They were regarded as recurrent expenditure, not capital expenditure. There seems to be a new administrative flexibility in the way the department is interpreting the administrative guidelines. These are the same guidelines that schools have been told to regard as the bible when it comes to the administration of school funding programs.

I understand that the purchase of furniture, tables, chairs and the like were not an acceptable purpose for the expenditure of Commonwealth grants in the past. Furniture, fixtures, blinds, floor coverings and building cupboards were okay because they were not movable items. These things, I would have thought, were supposed to be purchased from other funds—that is, recurrent funds. I will return to that in the committee stage of this bill.

There are other aspects of the program that need the Senate’s attention. In my judgment they need to be fixed. In the November Senate estimates hearings I questioned officers from the Department of Education, Science and Training about the Commonwealth’s ongoing financial interest in capital assets built with the Commonwealth’s own money. I have yet to receive satisfactory answers to those questions. I would be interested to know, for instance, what happens to the money a non-government school earns by selling a building erected using Commonwealth funds. According to the program guidelines, when a school sells such a facility or ceases to use it for educational purposes, it is supposed to repay the Commonwealth at a discounted rate over a number of years. In practice, it would appear that the Commonwealth is far from assiduous in recouping its investments in school capital programs. I am still waiting for answers to those questions from the department. We will have to wait and see exactly what the government says in response to that. But it does seem to me that the government is enforcing those guidelines on a very selective basis.

We have a number of examples. The Gippsland Christian College in Victoria received a grant for $120,000 in capital grants in 2000. It closed in 2002. I think we are entitled to know what happened to that money. The Kooralbyn International School in Queensland received a total of $816,018 in Commonwealth grants over the period 1993 to 1995. It closed in 2002. What happened to
the money? The Glendale Christian College in South Australia closed in 2000 after receiving $1.8 million over the period 1994 to 2000, most of it in the period post 1996. The school subsequently closed and reopened as the Glendale College and received an establishment grant of $320,750. It changed its name yet again to Investigator College and received in 2002, according to this report, a further sum of $73,000 for a new library building. The Foothills School in Western Australia received $275,000, with $100,000 of that allocated in 1998-99, and then closed the following year. I think we are entitled to know what happened to that money. I would seek from the officers an explanation of what steps they have taken to recover that money. We will have to see whether the answers actually arrive from the department.

I mentioned earlier that I was concerned about the blurring of the lines between the Commonwealth’s schools capital funding program on the one hand and its recurrent grants on the other. We see that the government has become rather ambivalent in what it allows non-government schools to do with capital grants. I believe they are using them now for recurrent purposes. This means that in setting in concrete the capital funding for non-government schools until 2007, as this bill would have us do, we are pre-empting to a significant extent the debate about education in the community and through the parliament, which is gearing up for next year and a rerun of the great schools debate of 2000. We all know that next year we have to deal with another state grants bill probably involving by then some $36 billion. Just about no-one has forgotten the bitterness and the extent of that last debate which, through the government’s own actions, rekindled the divisiveness and the destructiveness of the debate over private school funding which raged through the 1960s and 1970s.

Labor in government has tried its very best to extinguish that debate and to do so by healing the rifts that had developed in Australian society as a result of the bitter fight that occurred over Commonwealth funding for non-government schools. I think that Labor was largely successful in reconciling the community to the need to have an educational system based on a funding regime that said that each child was entitled to the very best according to need. It seems to me that the government will claim yet again that this has nothing to do with recurrent funding and that the bills before us are entirely a matter of capital. We can see that that is not the case.

The conditions of private schools—their facilities, their grounds, their equipment and all the things that are central to any serious concern about the consideration of how and to what extent the Commonwealth funds them—are integrally associated with capital expenditure. By comparison, the conditions in which students learn in public schools are also relevant. Independent schools that can afford to beautify or landscape their grounds and have state-of-the-art music and computer facilities and the like do so because the parents of their students can afford to pay higher fees. They can also afford these facilities because the Commonwealth helps them generously with capital funding. These two matters are intertwined. I suggest that the Senate will have to revisit these matters at some length in the process of the consideration of the new state grants bill next year. The issue will not go away. Public resentment at the way in which schools are funded and at the approach the government has taken with regard to that matter has not dissipated, essentially because the government is not funding schools on the basis of need.

Funds for literacy and numeracy initiatives and the funds for improving student outcomes need to be looked at more care-
fully. These programs do go some way in terms of this bill in addressing some of the quality issues in terms of schooling. However, even if taken as they are at the moment they are a pale shadow of the approach that ought be taken by any Commonwealth government—and which would be taken by a Labor government—serious about addressing the issues of educational disadvantage.

The former Disadvantaged Schools Program, for example, was indeed a program worthy of defence. It faced squarely the problems faced by individual schools, whether public or private. It sought to fund improvements designed to strengthen those schools and enrich the educational experience that those schools could offer our students. Labor in government has a clear awareness of the role of the national government in addressing social disadvantage, and that is what educational disadvantage leads to.

This government has lost sight of that goal. This government has lost sight of the connection between educational disadvantage and social inequality. It introduces a bill that hands out small pieces of money on an annual basis to deal with its idea of what it is to be disadvantaged. At the same time it promises lavish funds for up to a four-year period for private schools’ capital works programs. Funds are sorely needed in the relatively poor school communities. I do believe we need to look at these issues in the context of what it is today for many students who face serious inequality. We also need to consider that we are using taxpayers’ money to subsidise the already privileged and the already wealthy, and we ought to be examining what the social consequences of that are as well. Next year that will be a debate central to the political dialogue in this country. In this particular bill, Labor will be moving amendments to make sure that Commonwealth capital funds are spent more effectively and that there are in fact higher levels of accountability for what work is actually undertaken. I look forward to that debate in the committee stages of this bill.

Senator WEBBER (Western Australia) (1.57 p.m.)—The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003 intends to amend the States Grants Act 2000 to provide additional funding for capital grants for non-government schools for the forward years 2004-07. The amendments also cover additional funding for school literacy and numeracy programs and projects for the years 2003 and 2004. Many of the speakers in this debate in the other place have concentrated on the capital grants for non-government schools. I intend to make some comments on those matters but I also intend to spend some time discussing the literacy and numeracy aspects.

Many Australian households recently received a glossy pamphlet outlining the government’s policies in this area. The propaganda of course concentrated on the benefits of the national testing program and how this ensures that Australian children are only bettered by Finland in literacy and Japan in numeracy. No-one can argue against literacy and numeracy. It is a matter of profound importance that all Australians are literate and numerate. However, like most approaches adopted by this government, the end result is not about the people who are doing well; it is about the people who are being left behind.

There is little evidence to suggest that the national testing of literacy and numeracy in years 3, 5, 7 and 9 actually result in improvements in literacy and numeracy. Testing by itself does not improve performance. The improvement over the years is more a credit to the introduction of early intervention and remedial literacy and numeracy programs. Testing is not the way we increase literacy
and numeracy, and often has the opposite effect.

Take one case that I am aware of. A child going into year 3 next year will sit the national literacy and numeracy tests. This is a bright, intelligent child with excellent reading, writing and number skills. This child, however, does not work at the same pace as the other children in the class. The child happens to be a perfectionist. Therefore, the child takes longer than average to complete the work. The work is correct; the child is just slower in completing it than other students. We are going to take this child—

Debate interrupted.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Leader of the Government in the Senate) (2.00 p.m.)—by leave—I inform the Senate that Senator Ian Macdonald, the Minister for Fisheries, Forestry and Conservation, the Minister representing the Minister for Agriculture, Fisheries and Forestry and the Minister representing the Minister for Environment and Heritage, will be absent from question time this week. Senator Macdonald is representing the government at the Food and Agricultural Organisation ministerial conference in Rome. During Senator Macdonald’s absence, Senator Kemp will take questions relating to agriculture, fisheries and forestry, Senator Abetz will take questions on fisheries, forestry and conservation, and I will take any questions relating to environment and heritage.

Opposition senators interjecting—

QUESTIONS WITHOUT NOTICE
Fuel: Ethanol

Senator O’BRIEN (2.01 p.m.)—I concur with those interjections. My question is to Senator Kemp, representing the Minister for Agriculture, Fisheries and Forestry. Can the minister confirm that the government’s ethanol production target and accompanying subsidy regime threatens the future viability of Australia’s intensive rural industries, including pork, egg and poultry producers and feedlot operators? Why has the government disregarded the interests of this rural industry sector, and the thousands of regional jobs it sustains, to support the Manildra group of companies? Is the minister aware that many regional communities are concerned that the delivery of 96 per cent of ethanol production subsidies to Manildra is building that company’s competitive advantage in the ethanol sector to the disadvantage of other potential ethanol producers?

Senator KEMP—I thank Senator O’Brien for that important question. As Senator O’Brien knows, the government has a comprehensive support package for biofuels, including ethanol. The package aims to increase the use of ethanol in Australia. Senator O’Brien raised a number of other matters. He was concerned about the effect on other sectors. It is clear that other sectors will continue to raise issues in this regard. What I would like to do, as I am acting on behalf of the relevant minister, is to seek a detailed response to your question, Senator O’Brien. I will provide that to you promptly.

Senator O’BRIEN—Mr President, I would encourage the minister to have a crack at the question if he does have a brief there. I ask a supplementary question. Can the minister confirm, either now or later, that no modelling was undertaken by the government to determine the potential impact of its ethanol production subsidy on the price of livestock feed grains? Is the minister aware that some drought-stricken intensive agricultural producers have been forced to pay $350 per tonne for feed grain? Why did Mr Truss fail to stand up for these producers by consenting to the Prime Minister’s Manildra-friendly ethanol policy without insisting on any assessment of the impact of the ethanol pro-
duction subsidy on the intensive industry sector?

Senator KEMP—There are a great range of assumptions in that supplementary question, some of which I do not think follow from the proposition which the good senator was trying to argue. Senator, I will draw your question to the attention of the relevant minister and will provide you with a response.

Economy: Performance

Senator BRANDIS (2.04 p.m.)—My question is directed to the Minister representing the Treasurer, Senator Minchin. Will the minister advise the Senate of any recent assessments of Australia’s economic performance and prospects for continued strong growth? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Brandis for his question and acknowledge his great interest in good economic policy—unlike some others in this place. Last week the OECD released its latest economic outlook, which compares Australia’s economic prospects to those of other developed countries. I am happy to report that the OECD provided a buoyant picture of the Australian economy. It forecast economic growth of 2.4 per cent this year, increasing to 3.7 per cent next year and four per cent the year after. That would continue to see us as one of the fastest growing developed economies in the world. The main driver of growth, from the OECD’s point of view, will be net exports because of the improvements that are occurring in the world economy. The OECD also forecast that inflation in Australia will remain contained within the Reserve Bank’s two to three per cent target range; it is forecasting an inflation rate of just two per cent next calendar year. It forecast a continuing low unemployment rate, remaining under six per cent in both 2004 and 2005.

Most importantly from the government’s point of view, the OECD commends the Australian government’s policy target of maintaining a budget in balance over the economic cycle, which means running budget surpluses in the years of economic growth. This highlights the fact that we are one of the few developed economies actually running budget surpluses. The US is running a deficit of 3.1 per cent of GDP; Germany 3.7 per cent; France 2.7 per cent; and Japan 7.9 per cent. In contrast, we ran a surplus in 2002-03 of one per cent of GDP. So according to the very authoritative OECD, we have a strong economy, one of the fastest growth rates in the developed world, low unemployment, low inflation, and a strong budget surplus.

This great position has not happened by accident. It has come about through a disciplined approach to the budget, a commitment to ongoing reform, and a preparedness to tackle the tough issues in the national interest. For that reason the Howard government has returned our budget to surplus from the deficit of $10 billion a year that we inherited. We have reduced Labor’s debt by $66 billion. We have reformed the labour market. We have brought about a lot of much needed productivity improvements, especially on the waterfront. The Reserve Bank is now independent, with a strong anti-inflation charter. We have engaged in massive reform of our tax system, which has been to the benefit of all Australians, and we have privatised every single government-owned Australian airport, National Rail and half of Telstra.

But the most significant thing is that the Labor Party in opposition has, in complete contrast to its years in government, opposed just about every single economic reform that this government has put forward to the Australian people, most of which has had an election mandate. The Labor Party has shown no interest whatsoever in tackling the tough issues facing this nation and ensuring
Australia’s long-term economic prosperity. It has consistently put short-term political gain ahead of the national interest, and it has paid a political price for focusing just on the short term. That has led to what all commentators acknowledge is the complete policy disarray on the other side of this chamber. Whoever leads the Labor Party will not change that fundamental problem. The positive economic and fiscal situation which the OECD highlights will all be at risk under a Labor government, which long ago jettisoned any semblance of responsible economic policy, and we all know that will not change, whatever the outcome tomorrow.

**Iraq**

Senator FAULKNER (2.08 p.m.)—My question is directed to Senator Hill, in his capacity as Minister for Defence and as Minister representing the Minister for Foreign Affairs. Can the minister provide the Senate with information about any recent developments regarding the major weekend attacks on coalition convoys around the Iraqi town of Tikrit, where reportedly at least 46 Iraqis loyal to Saddam Hussein have been killed? Is it the Howard government’s view that, rather than sporadic attacks by remnants of the regime, there is now a well-planned insurgency under way targeting foreign nationals and convoys, such as the 14 foreign nationals killed this past weekend?

Senator HILL.—The government obviously regrets the loss of life that occurred on the coalition side over the weekend. Reference has been made to the two Japanese diplomats who were killed north of Baghdad and to the Spanish officials who were killed south of Baghdad. The best advice the government has is that this is not a coordinated, centrally commanded insurgency, that it is still a range of different remnant groups—some former Saddam Hussein supporters, Baathists, Fedayeen and also, in some instances, Islamic extremists. What is apparent is that their methods of attack have become more sophisticated and more lethal but, as I said, despite that, the evidence that has been given to the government is not of an insurgency that is being centrally commanded or coordinated. The vast majority of attacks are still in what is being referred to as the ‘Sunni triangle’, which runs north of Baghdad. Apart from sporadic incidents that are nevertheless lethal, most of the remaining part of the country, which is the majority of the country, is reasonably stable and reasonably secure. But there is no doubt that these remnants are determined to destroy efforts that are being made by the coalition and by many Iraqi people to stabilise the country and to build a new and better future for the Iraqi people. At present their violence is having very significant consequences.

It raises the issue of what should be done. It is the view of the government that there is no alternative but to confront these insurgent elements head-on, and that is being done through the coalition forces. There are over 30 countries which are contributing forces in Iraq at the moment, and over 70 countries claim to be part of the coalition, therefore either sending forces or supporting the coalition in other ways. On a daily basis, the number of Iraqis who are able and equipped to provide a security element increases as well; there are now over 40,000 police in the street. As I said recently in the Senate, the first battalion of the new Iraqi army has graduated. There is a plan to accelerate growth of the new Iraqi army into the new year, and other security elements have been established and are growing rapidly as well. That illustrates the fact that the Iraqi people, despite the risks and damage, do want to take control of their country and do want to provide for their own security. But in this period at the moment when they are combating insurgent forces that have obviously had mili-
tary or intelligence training in the past, and in a country that is still regrettably awash with weapons, it is a difficult task that they face. *(Time expired)*

**Senator FAULKNER**—Mr President, I ask a supplementary question. I note in the minister’s answer that he mentioned specifically the attack on the two Japanese diplomats. I ask the minister whether the Australian government has had any contact with the Japanese government in a bid to firm its resolve to send peacekeeping troops. Minister, given the political pressures on Prime Minister Koizumi, does the Australian government still expect the Japanese government to provide its promised support?

**Senator HILL**—I will take advice on whether the foreign minister has made contact with the Japanese government since the murder of these diplomats. The Australian government does recognise the very significant contribution that Japan has been making and the very significant aid programs that it has in Iraq. We also have appreciated the commitment that it has made in relation to sending a force from the Japan Self-Defence Force. We hope that Japan will be able to send forces to Iraq; we know that they will be in a non-combat role—we understand that. We also know that this would be the first time that Japan has sent a force of this type since the Second World War and it is a very big decision for the country to take. But the statements that have come from the Japanese Prime Minister have been courageous and we believe he should be supported. *(Time expired)*

**Economy: Small Business Sector**

**Senator TCHEN** (2.14 p.m.)—My question is to the Minister representing the Minister for Small Business and Tourism, Senator Abetz. Will the minister inform the Senate how the strength of the Australian economy has resulted in higher confidence in the small business sector? Is the minister aware of any alternative policies and would he inform the Senate as to whether these alternative policies would adversely affect this confidence?

**Senator ABETZ**—I thank Senator Tchen for the question. The November 2003 Sensis business index revealed that confidence in the Australian economy is at its highest level since the business index commenced in 1993, some 10 years ago. The survey found a further rise in business confidence among small and medium enterprises across Australia, with up to 63 per cent of businesses expressing confidence in their own prospects over the next 12 months. Sensis chief economist Steven Shepherd said:

> The rise is on top of what was already an historically high base.

The report found that Australian government policies were helping small businesses. Economic management was another reason given. This was particularly important to regional small businesses. Other reasons given were that the Australian government was more supportive of and interested in small businesses and that they had made sound policies.

The Howard government is committed to the small business sector and, while we appreciate their support, there is still much more to be done. We have not given up on making the dismissal laws fairer, and secondary boycotts are still a scourge in the workplace. Unfortunately, for the 1.1 million Australian small businesses, it does not matter who wins tomorrow because, if Labor ever gets into government, small business will be the loser. Mr Beazley, when questioned about small business on 6PR in Perth, said:

> We have never pretended to be a small business party ...

If you think that the member for Werriwa will be better, think again. You just have to see what he did to small business as Mayor
of Liverpool. He called for the introduction of a betterment tax and full cost recovery for public infrastructure projects in new release areas, which would have crippled thousands of small businesses in the building industry. Mr Latham was also not averse to a bit of political pork-barrelling at the expense of business in the lead-up to a council election. In 1991, he massively increased council rates for businesses to pay for a rates freeze for householders. Perhaps most outrageously of all, Mayor Latham sought to slug businesses with a $300 fee for putting A-frame signs up in front of their offices.

Yes, that is right, in the middle of the Keating recession that we had to have, with 21 per cent interest rates, Mayor Latham tried to extort $300 out of every small business which wanted to put up an A-frame sign in front of their business. That is the record of Labor on small business. We have one contender who says Labor has never been the party for small business and another who cannot wait to raise the taxes on small businesses. Both Labor’s alternatives are anti small business and the policy will not change. The Howard-Anderson team are unashamedly pro small business and pro low tax and that is why we look forward to working in partnership with the small business community of this country for the years to come.

Iraq

Senator HOGG (2.19 p.m.)—My question is to Senator Hill, in his capacity as Minister for Defence and the Minister representing the Minister for Foreign Affairs. Further to the minister’s answer to Senator Faulkner’s question earlier today in question time, can the minister advise of the circumstances where seven Spanish intelligence officers and two Japanese diplomats were killed in Iraq over the weekend? Is it the case that Australian personnel are involved in similar operational functions to those nine individuals killed?

Senator HILL—My information is still sketchy and what I say may therefore be improved upon in time but, as I understand it, the two Japanese diplomats were travelling alone with an Iraqi driver in a vehicle north of Baghdad. I understand that they were travelling towards Tikrit and a suggestion was that they were on the outskirts of Tikrit. I understand the vehicle was a protected vehicle; it was a civilian vehicle but I assume it had protective glass and the like. Reports were that for some reason or other—and there is some speculation about this—they left their vehicle and were attacked.

In relation to the Spanish deaths, I understand that they were in two vehicles that were south of Baghdad, travelling north to Baghdad. Neither vehicle was protected and, basically, they were ambushed. Australian officials would be unlikely to be travelling in the same way as the Japanese officials or as the Spanish people who lost their lives. Whilst I do not want to go into details as to how we might operate differently, we, as I have said in the Senate before, are extremely cautious. Officials cannot totally eliminate risk whilst at the same time doing their job, but they do take a number of precautions to limit the chances of becoming a target in this way.

It is not for us to tell other countries within the coalition how to operate. They make their own judgments on methods and safety. It is just a matter of great regret to us that these people are so determined to return to the old, oppressive ways of the past that they are not only attacking coalition military personnel and officials but, as we all know, blowing up United Nations representatives, blowing up the International Red Cross and attacking the establishments of other charities such as CARE. These are the sorts of
people that are being combated in this conflict. It will be a difficult task to overcome this insurgency, but it is a task in which we as an international community must succeed.

Senator HOGG—Mr President, I ask a supplementary question. Can the minister advise whether the government is reviewing the security situation for Australian personnel serving in Iraq as a result of these tragic developments.

Senator HILL—As I said the other day, we are constantly reviewing the security environment and the security support we provide. I think I mentioned the other day that, if you take the example of our representative office, we have a dedicated military support team, including armoured vehicles, for the purpose of protecting them in their work. They are in position and basically overlooking the location of the representative office. We have put in place a great deal of protection around the accommodation for Australia’s officials as well. There are different levels of protection. We have Iraqi security guards and we have Australian military personnel at various levels. As I said, we cannot eliminate all risk, but we do everything that is possible to minimise that risk consistent with the important work that these people are doing.

Automotive Industry: Tariffs

Senator RIDGEWAY (2.24 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Trade. Is the minister aware of an article in today’s Australian Financial Review which reports that the government is considering the removal of all tariffs on the importation of automobiles within five years as part of the free trade agreement with the United States? Given that the government has recently introduced changes to the Automotive Competitiveness and Investment Scheme, which is the largest single industry assistance package for any industry, will the government give a clear and unambiguous undertaking that the proposed free trade agreement will not affect the program of tariff reduction currently agreed with the Australian industry?

Senator HILL—The government has held intensive consultations with car manufacturers as part of its continuing dialogue with Australian industry over the US free trade agreement. The industry has expressed its support for the FTA and recognises the gains on offer to the Australian economy from a deeper economic relationship with the US. The Federal Chamber of Automotive Industries has said that the big picture opportunities from an FTA far outweigh any minor problems for the car industry. It is clear that the individual producers have differences of view on some aspects of the possible outcomes of the negotiations, but the industry has strong offensive interests in the FTA negotiations, in particular in the removal by the US of the 25 per cent tariff on light commercial vehicles that impacts directly on Australian utes. Over three million light commercial vehicles are sold in the US each year, a market worth tens of billions of dollars. Toyota’s case, the issue of concern relates to the pace of any tariff cuts which might apply to US auto products under the FTA. In June the president of Toyota Australia reaffirmed the commitment of the company to its Australian production and refuted reports that claimed that an FTA with the US would mean the closure of the Altona plant, as the media were speculating. Toyota Australia’s success in exporting Camrys to the Middle East shows just how competitive it is.

Senator RIDGEWAY—Mr President, I ask a supplementary question. I thank the minister for his answer. Is the minister aware that one of the key aspects of the recent changes to A

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have a significant window of opportunity to conduct long-term strategic planning for investment and research over the next decade in line with tariff reduction? Is the government concerned about comments by not just Toyota but also Mitsubishi about a quick cut in tariffs? Can the minister guarantee that the government will honour its commitment to the industry to stick to the agreed time frames and, more particularly, wait for the outcomes of another agreed future Productivity Commission review before deciding to cut any tariffs in relation to the free trade agreement?

Senator HILL—I understand what the honourable senator is saying, but what I was saying in return was that there are real opportunities for the Australian car industry in this negotiation. The Australian government has an interest in the Australian car industry coming out of this process as a winner. It has been very successful in recent years. I talked about exports into the Middle East. The industry has shown that it is competitive; it has shown that it produces a high-quality product. We are now interested in expanding its market opportunities. Through this negotiation, there is the opportunity to significantly expand its market opportunities into the US. That is why, overall, the industry supports what is occurring. There may be particular issues that they are concerned about, and the government is sensitive to those particular issues, but overall it is the goal of the government in this negotiation that the Australian car industry will be a winner.

Aviation: Air Safety

Senator O'BRIEN (2.28 p.m.)—My question is to Senator Ian Campbell, representing the Minister for Transport and Regional Services. Is the minister aware that the president of Civil Air, Mr Ted Lang, has described the new airspace management system as ‘a serious operational problem for the controllers and a serious worry for commercial aircraft pilots’? Is the minister also aware of reports that some light aircraft pilots are confused about where the downgraded airspace starts and stops? Why is the government stubbornly ignoring the warnings of safety professionals and putting the travelling public at risk?

Senator IAN CAMPBELL—I thank Senator O’Brien for his question. It is an important question. The last part of his question said: why are the government putting air travellers at risk? The reality is that we are not putting air travellers at risk. The government and our agencies have been working very hard over a long period of time to ensure that air travellers have a safer airspace system and that they are safer. This works in tandem with the incredible effort that the government are going to, through a range of other agencies, to ensure that air travellers are safer on the ground.

The National Airspace System stage 2b reforms are called stage 2b—for those who do not take a close day-by-day interest in these matters, which I know Senator Kerry O’Brien does—to indicate to the punter that they are a stage in a long process. Airspace reform is something that has been attempted in this country by governments of both political persuasions over the past decade. I think it is fair to say that governments of both political persuasions over the past decade have pursued this for very sensible motives—that is, to have a system that makes air travellers safer.

There were reports over the weekend and in this morning’s press about some people within the general aviation sector in particular and an air traffic controller who is the head of that union saying that there had been a number of safety incidents reported. Some of the press I read this morning said there were up to 20 reports. To put that in context,
the actual number of reports is five. One of them was totally unrelated to the new air-
space system. To put that into further con-
text, all of these incident reports have been
referred to the ATSB, the Australian Trans-
port Safety Bureau, and will also be investi-
gated by Airservices Australia. Airservices
Australia receives something like 1,000 inci-
dent reports a year, so to receive some more
at this time is not unexpected, but they will
all be taken seriously.

I commend all people in the aviation in-
dustry in Australia—a crucial industry for
Australia, which is such a large country that
it requires an efficient and safe aviation sys-
tem—regardless of their views about the im-
plementation of the NAS, and stage 2b in
particular, for committing to implement it in
a cautious and sensible way. The government
has shown caution throughout the process of
reform to ensure that every stage of imple-
mentation of the reform is done with the
fundamental requirement of air traveller
safety at its core. We will not, as a govern-
ment, allow that to be compromised. I en-
courage anyone from any part of politics in
Australia who has any concern about the
reform process to seek a detailed briefing
from the National Airspace System Imple-
mentation Group, which is chaired by Ken
Matthews, the head of my department. Fur-
thermore, if any of the operators that Senator
O’Brien has referred to find themselves not
fully informed about the system, can I firstly
say that the government has gone to great
lengths to ensure that all people operating
within the system, particularly pilots, have
been availed of detailed briefing packs and
detailed briefings. If any of those pilots have
missed out—*(Time expired)*

_Senator O’BRIEN_*—Mr President, I ask
a supplementary question. Firstly, does the
minister—noting that he says that this sys-
tem is not putting the travelling public at risk
and that it is a safer system—agree with the

comment from Mr Anderson’s spokesman in
the _Courier-Mail_ today:

It’s a new system and we fully expected an in-
creased number of incidents …

How can the government argue this is a safer
system if Minister Anderson fully expects an
increased number of incidents? Secondly, if
pilots within the system are fully informed
and still—as they do—consider the system
less than safe, what does that say about the
system?

_Senator IAN CAMPBELL_—I will just
conclude what I was going to say when the
time limit cut in. If there are any pilots who
do not believe that they are fully informed
then they can avail themselves of a mass of
information through the NAS Implementation
Group. If Senator Kerry O’Brien is per-
sonally aware of anyone who needs that
briefing pack, I am happy, outside question
time, to ensure those pilots are given it.

In relation to the comments in the _Cou-
rier-Mail_, which I have not read, I think it is
fair to say that they are paraphrasing what I
have just said in the parliament. That is, with
a new system you would expect, if you were
a reasonable person, to have an increase in
incident reports—I said that just a few min-
utes ago. We have carefully looked at those
incident reports.

_Senator Mackay_*—Incidents, not incident
reports.

_Senator IAN CAMPBELL_*—Incident re-
ports and incidents, that is right. They will
become an incident if they are regarded to
have been an incident. None of these have
been.

_Senator Mackay_*—That’s not what you
said.

_Senator IAN CAMPBELL_*—The reality
is that there has been a number of reports.
Five of them have been investigated. None
of them were seen to have been incidents. (Time expired)

**Iraq**

Senator BROWN (2.35 p.m.)—My question is to the Minister for Defence. Has the government been considering plans, contingency or otherwise, to send up to 3,000 extra Defence Force personnel from Australia to Iraq during next year? Could the minister outline any contingency plans for Iraq that have been developed in recent times?

Senator HILL—No, there are no plans, contingent or otherwise, that could in any way be described in those terms. Apart from the announcements that the government has made, there has been and continues to be consideration given to increasing the number of trainers we have for the Iraqi armed forces by a small number. As I said, that is still under consideration. We notice that that particular suggestion was welcomed by the opposition’s foreign affairs spokesman, Mr Rudd, although there seemed to be some other views on the side of the opposition that differ. We could take into account the views that Mr Rudd put to Mr Howard in his letter, but the government will make up its own mind in any event. When we have made a decision there will be an announcement. I stress that if we do go down that path it would only be a small number of personnel.

Senator BROWN—Mr President, I ask a supplementary question. Minister, have there been any discussions about up to 3,000 personnel being sent in any way that I did not describe in the original question? I ask for a personal view, from your experience in Iraq. You were talking about armoured vehicles being necessary for travel in a country awash with weapons. Did you have to travel by tank, or were you advised to? If not, how did you travel and did you at any time come close to hostilities, including other vehicles being destroyed?

Senator HILL—I am told that the CDF in a speech referred to about 3,000 ADF personnel serving overseas in various operations. Perhaps that is what Senator Brown is referring to. We have said recently that we think that the number of Australians serving in the Middle East area of operations is about right. We do not have any plans for any significant increase. In relation to how Australian officials or visitors travel in Iraq—

Senator Brown—I was asking about you.

Senator HILL—I am not wanting to distinguish myself from others. They generally travel in a protected motor vehicle and, where possible, they are supported by Australian ADF people within the convoy. We have three LAVs there at the moment which give that added form of armoured protection which is very useful. (Time expired)

**Aviation: Air Safety**

Senator MACKAY (2.38 p.m.)—My question is to Senator Ian Campbell, representing the Minister for Transport and Regional Services. My question also relates to the new airspace management system introduced last week. Is the minister aware that an Australian Federation of Air Pilots representative told *Lateline* last week that ‘places most at risk are Hobart, Launceston and Alice Springs’. Can the minister advise what additional level of risk the people of Tasmania and the Northern Territory are enduring as a result of the government’s national airspace experiment?

Senator IAN CAMPBELL—The government believes that the airspace management system that we are bringing in in stages—and stage 2b, which came into force on Thursday last week, is but one of those stages—will in fact improve air safety for all Australians, regardless of where they live. But we also recognise that it is a new system...
and there will be people who are used to the old system who will naturally move against the change or stand against the change. People generally like the old system because they do not have to learn a new system.

The reality of this system is that it has been tried and tested, and not only in the United States, which is a marketplace that has an enormously high number of air traffic movements on any given day. It also has a significant number of smaller regional services that are not at all different to those of many Australian regional centres, such as Launceston, Hobart and others. It also has a significant mix of large domestic and international movements mixed in with smaller regional movements and, of course, a huge general aviation sector. It also has been a significant success in the United States. That is not to say that you can import into Australia every aspect of every American system and expect it to work.

We have set up a diligent process which has involved Airservices Australia, CASA, the Royal Australian Air Force and a range of other stakeholders—in fact all the stakeholders in the system. CASA ultimately has responsibility for the safety sign-off for the introduction of every stage of the National Airspace System and has certified that the introduction of stage 2b is safe. It is not only safe for people who live in Sydney, Canberra or Melbourne—in the triangle—but also safe for people who live in regional centres in Tasmania, Western Australia and across the whole of Australia, because it has been diligently and cautiously worked through, and the safety of air travellers is the pre-eminent concern. We are trying to boost safety, certainly not put it at risk anywhere in Australia.

Senator MACKAY—Mr President, I ask a supplementary question. I remind Senator Campbell that the minister’s spokesperson has told the Courier-Mail, ‘It’s a new system and we fully expected an increased number of incidents.’ That is incidents, Minister, not incident reports. If the minister is so sure that the system is safe, will he take personal responsibility for each additional incident caused by the new airspace management system that the government insists on introducing? Why won’t the government and the minister halt the system and start listening to the concerns of professional pilots, air traffic controllers, airport operators, and virtually every other industry representative who say, unequivocally, that the new system puts the travelling public at risk?

Senator IAN CAMPBELL—I think that is a very sound supplementary question that asks whether the minister will put his own name on the line. The reality is that on television last week we saw the minister going out to the nearest airport to his office, standing on the tarmac and taking personal responsibility. He has made himself aware of the process. It has been signed off by a whole series of professionals—very senior professionals in all of the safety disciplines and the Royal Australian Air Force—as a safe system. That is why he has convinced himself that it is safe and he has, as you have suggested, already taken some personal responsibility in that regard, an amount of personal responsibility I think we should all be proud of. I thought it was a terrific performance by the Minister for Transport and Regional Services, John Anderson, and this process is a great credit to him. We will keep pursuing it. We will keep talking to all the stakeholders. (Time expired)

Roads: Funding

Senator McGAURAN (2.43 p.m.)—My question is to the Minister for Local Government, Territories and Roads, Senator Ian Campbell. Will the minister advise the Senate of the government’s ongoing commitment to providing better roads in Victoria,
and what are the impediments to delivering this improved infrastructure?

Senator IAN CAMPBELL—The commitment of the federal government to building quality infrastructure in Victoria is on the record. It is a commitment that is unsurpassed. It is a commitment we are seeking to implement with the cooperation of the Victorian government. I hope, in my meetings with the Victorian transport minister in Victoria later this week, that we are able to forge a partnership and create the beginning of a cooperative relationship which will see infrastructure spending, and particularly road spending, in Victoria deliver some much needed results for that vital state.

One of the things I say from time to time, particularly when I am in Victoria, is that when Victoria succeeds Australia succeeds. It is not something I often say in Western Australia, but when I am in Victoria and when I am in the national parliament there is no doubt this is one of the things that Senator Conroy and I would agree on: when Victoria succeeds Australia succeeds, and getting the infrastructure right in Victoria is absolutely vital. We need to ensure that the crucial links—the rail links and the road links—to Melbourne and to Melbourne’s ports work successfully. I was therefore very sad to see that an Auditor-General’s report by the Victorian Auditor-General, Mr Wayne Cameron, identified that the Victorian government had left $207 million of funds unused in this year’s budget. It took the Auditor-General to find it. Mr Cameron said that the money should be repaid to the consolidated revenue trust fund.

Victoria is also the state government which has disallowed $445 million of federal government funds that were committed to build the Scoresby Freeway—on an agreement signed with the Victorian government to build the road without any tolls on it. Senator Kemp nods. He knows this issue well because he is yet another great Victorian. For Victorians who care about the Scoresby Freeway, this $445 million remains committed by the federal government. The cheque can be signed and handed over immediately the Victorian government stick to their side of the bargain and build the crucial piece of infrastructure with no tolls on it. The Victorian government promised prior to the last state election that they would build the Scoresby Freeway and make it, in fact, a free way where people would not have to pay tolls. One of the items I have listed for my discussion with the Victorian transport minister here in Parliament House is to try to find a resolution in relation to the Scoresby Freeway.

There are significant infrastructure projects and road projects in Victoria that need significant investment. Clearly, a state government cannot make that investment by themselves. Clearly, a partnership needs to be formed between the Victorian government and the Australian government when it comes to funding these enormous projects worth hundreds of millions of dollars. But the Victorian government will not get them done by doublecrossing the federal government on a nearly half a billion dollar project at Scoresby or by hiding $207 million in the fine print of its own budget and not allocating that money to roads. I think the people of Bendigo, for example, would be disturbed to know that while they are trying to get the Calder Highway upgraded, there is $207 million hidden in the budget that could have been spent this year but was not. So in a constructive way I will meet with my state counterpart and seek to create a positive, new relationship between our two governments aimed at building better roads in Victoria. (Time expired)
Aviation: Air Safety

Senator WONG (2.48 p.m.)—My question is to Senator Ian Campbell, representing the Minister for Transport and Regional Services. My question again concerns the new airspace management system introduced last week. Is the minister aware that Qantas and Virgin Blue pilots are concerned about the risk of mid-air collisions with light aircraft, under the new system? Is the minister aware that Qantas and Virgin Blue pilots are repeatedly asking for light aircraft heights and information to assist in collision avoidance. Why doesn’t the minister put the new system on hold and sit down with the industry to fix the flaws in this new airspace system?

Senator IAN CAMPBELL—As I have said candidly and frankly to the Senate, and as the Minister for Transport and Regional Services has said publicly, when you are implementing a new system it would be incredibly optimistic to hope that you could implement it—particularly within an industry sector as large as the aviation sector—without some push back from people who were opposed to change. Humans generally do not like change; they do it when it becomes obvious that there is no alternative. But the reality with this process is that, although some Virgin Blue pilots and some Qantas pilots have made statements, overall the introduction of stage 2b has been very successful. There were, for example, predictions by pilots and air traffic controllers of delays. The government expected delays. We said that the introduction of the system in a cautious way by air traffic controllers and pilots is to be welcomed. It is a reflection of the caution that our aviation sector stakeholders apply to safety issues. I think that all Australians can be very proud of the safety record here in Australia and we should welcome the fact that pilots and air traffic controllers are implementing the reforms in a cautious manner.

The reality, however, is that there were no delays as a result of the introduction. There have been a very small number of incident reports, which are all being dealt with diligently. The reality is that through the consultation, education and implementation processes, which have been headed up by Ken Matthews, the head of the Department of Transport and Regional Services—with the full support of the Royal Australian Air Force and Australia’s major carriers—the government is committed to the importance of this system and the intrinsic safety improvement that this system can deliver. The government is also committed to introducing the reforms steadfastly and to ensuring that all stakeholders are consulted—in the first instance at each stage of the reforms—and that the education process is thorough. We are not surprised by stakeholders in the industry wanting to resist the reforms and the changes. We welcome the fact that they are being introduced cautiously, but we reassure all Australian air travellers that this is a safer system that harmonises Australia with the biggest and highest air traffic movement jurisdiction on the planet—that is, the United States—and that there are significant benefits for safety and the growth of our aviation sector, which is a vital part of the Australian economy.

Senator WONG—Mr President, I ask a supplementary question. Can the minister confirm that air traffic controllers have reported a significant drop in light aircraft traffic nationally? Can the minister also confirm that air traffic controllers have reported more than 20 air safety breaches involving Australia’s downgraded airspace since the introduction of the new airspace system? Minister, when will the government properly address industry and passenger concerns about the safety of its new system?
Senator IAN CAMPBELL—Mr President, I think Senator Wong’s supplementary question was very similar to Senator O’Brien’s first question. There were newspaper reports of 20 incidents, on behalf of the unions, which were wrong. My advice is that there have been only five incidents relating to the new airspace system. They were not near misses; in the main, they were minor technical issues involving transponders. All of the incidents, as I said in response to Senator O’Brien’s question, will be investigated by Airservices Australia and have been referred to the ATSB. We do expect increases in the number of reports. They will all be thoroughly investigated, and they will form part of the government’s implementation process. I assure all air travellers that the system is a better system than the one we are leaving, and I thank all of those people in the aviation sector who have worked so constructively with the government to implement it. (Time expired)

Immigration: Children

Senator GREIG (2.53 p.m.)—My question is to Senator Chris Ellison, the Minister representing the Attorney-General. Is the minister aware that in April this year the Human Rights and Equal Opportunity Commission completed the draft report of its national inquiry into children in immigration detention, following a public inquiry and the receipt of some 340 submissions? The minister may be aware that in April this year the Human Rights and Equal Opportunity Commission completed the draft report of its national inquiry into children in immigration detention, following a public inquiry and the receipt of some 340 submissions? The minister may be aware that in April this year the Human Rights and Equal Opportunity Commission completed the draft report of its national inquiry into children in immigration detention, following a public inquiry and the receipt of some 340 submissions? The minister may be aware that in April this year the Human Rights and Equal Opportunity Commission completed the draft report of its national inquiry into children in immigration detention, following a public inquiry and the receipt of some 340 submissions? The minister may be aware that in April this year the Human Rights and Equal Opportunity Commission completed the draft report of its national inquiry into children in immigration detention, following a public inquiry and the receipt of some 340 submissions? The minister may be aware that in April this year the Human Rights and Equal Opportunity Commission completed the draft report of its national inquiry into children in immigration detention, following a public inquiry and the receipt of some 340 submissions? The

Senator ELLISON—I am aware of the work that the Human Rights and Equal Opportunity Commission was doing on this report. As to whether that is with the Attorney, I will take that up with the Attorney and advise the Senate. I can say, though, in relation to the question of children in detention, that we have had a community program in place for some time now which has allowed for the release of children and mothers. We conducted a trial at Woomera, and it is a matter upon which we place great importance. But, in relation to that particular report, I will take that up with the Attorney.

Senator GREIG—Mr President, I ask a supplementary question. Given that the inquiry began in 2001 and that the draft report was completed in April of this year, can I ask the minister to also pursue with the Attorney why the process has taken so long, particularly given the public interest, and why the Attorney has made no attempt to expedite the process?

Senator ELLISON—The advice I have to hand is that Dr Ozdowski, who has been conducting this inquiry, expects to complete the inquiry and finalise the report in early 2004. This has been a comprehensive inquiry involving a very important subject, and it is important that we get it right and that the report be an adequate one. I understand that that report is due to be delivered to government in early 2004.

Foreign Affairs: Zimbabwe

Senator KIRK (2.55 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Foreign Affairs. Can the minister advise whether Zimbabwe will be invited to attend the CHOGM meeting in Lagos at the end of this week? Can the minister advise what representations the Australian government has made to the Nigerian government over this matter? What has been the collective view of the Commonwealth troika—that is, South Africa, Nigeria and Australia—regarding Zimbabwe’s attendance at CHOGM?
Senator HILL—I did not think that Zimbabwe was going to attend, and I think that that is the view of the Australian government.

Senator KIRK—Mr President, I ask a supplementary question. What is the government’s view of indications by Zimbabwe’s President Mugabe that Zimbabwe may withdraw from the Commonwealth if Zimbabwe is denied admittance to CHOGM?

Senator HILL—I noted press reports to that effect this morning. I think that that would be an issue that we would have to cope with if and when it occurred, but the Australian government would not be blackmailed by a threat of that type. The point is that this is not an academic exercise. Behaviour by Mr Mugabe and his regime has been intolerable. The Commonwealth took action to demonstrate that and to ensure that it was recognised internationally that such behaviour was inconsistent with the standards of the Commonwealth organisation and that it would not be tolerated. Mr Howard took a lead on that position, and I think it is something that should be commended. (Time expired)

Housing: First Home Owners Scheme

Senator MASON (2.58 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Will the minister inform the Senate of the Howard government’s policies to assist Australians buying their first home? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Mason for his question. I appreciate his ongoing interest in home affordability, particularly for first home buyers. The government recognises that the strong rise in house prices, which has generated wealth gains for around 70 per cent of Australian households, has also impacted on those yet to enter the market. Some very positive influences have driven the recent demand for housing. For example, household wealth has increased by $1.6 trillion, or around 90 per cent, since the coalition came to power. As everyone knows, a large element of this growth has flowed from the housing sector. One of the biggest impacts on the demand for housing has been the record low interest rates that Australians have enjoyed under this government. Household mortgage interest rates remain at very low levels—at 6.8 per cent, down from 17 per cent under Labor in the 1990s. Australians are now saving around $7,000 a year in interest payments on an average new home loan of $190,000. In addition, incomes remain strong, with almost 1.3 million new jobs created since the government came to office.

To assist first home buyers, the government has put in place the first home owners grant of $7,000 paid to every first home owner, whether they are buying a new or an established home. Eighty-five per cent of first home owners do not buy new homes, so they do not face the GST; yet they still get the grant, which is very generous. These grants have assisted over 513,000 families with the purchase of their first home, with those families receiving in excess of $4 billion. Recently APRA, the Australian Prudential Regulation Authority, did some stress testing of the housing loan portfolios. It found that banks, building societies and credit unions as a group enjoy strong capital positions today and that this strength, although reduced, would not be materially affected under a worst-case scenario that APRA tested. It is a very important finding. In addition, the government has taken the lead in establishing a Productivity Commission inquiry into concrete ways to help the housing market to work effectively and to give further help to first home owners.

Of course, when we talk about factors driving the cost of housing we do need to
look at state Labor governments for some answers. The states will receive $8.5 billion in stamp duty on property conveyances in 2002-03. Since 1996, the stamp duty on the average home has hiked up from $6,000 to $16,000 in the most populated cities, Sydney and Melbourne. The Labor states have done nothing to scale back this unexpected windfall. In addition, all the GST revenue goes to states and territories, which will be sharing in an estimated $31.7 billion in GST revenue in 2003-04. New South Wales Labor has said it will lobby the federal government to means test first home owners grants—something it rejected outright when the grant was first proposed. On the weekend we had Mr Carl Scully, the Minister for Housing, coming up with suggestions that Australians should be allowed to raid their superannuation savings for a housing deposit. Mr Scully knows he is on pretty safe ground in making that suggestion, because this government would not countenance Australians not retaining their superannuation for their retirement. It is unbelievable that Mr Carr and the New South Wales government want the Australian government to take action yet are not prepared to do anything themselves. If Labor wants to do anything to help first home owners, it should encourage its state counterparts to get on with reducing stamp duty and taking the burden off Australian families.

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

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Fuel: Ethanol

Senator KEMP (Victoria—Minister for the Arts and Sport) (3.02 p.m.)—Earlier today, Senator O’Brien asked me a question without notice regarding excise arrangements for biofuel production and the impact on the feedlot industry. I undertook to provide additional information. Mr Truss has been enormously efficient on this matter and was clearly tuning in to the question. I now seek leave to incorporate in Hansard the response which has been provided by the Minister for Agriculture, Fisheries and Forestry.

Leave granted.

The answer read as follows—

In Question Time today, Senator O’Brien expressed concern that the Government’s excise arrangements for biofuel production will impact on the feedlot industry. There are many factors affecting feed grain prices to be considered that relate both to supply, (such as industry capacity, returns from alternative enterprises and climate) and demand which is dependent on livestock numbers and feed type needed, livestock product prices and other industries’ requirements, for example ethanol and domestic/external market issues.

The Government has commissioned a joint report from the CSIRO, the Bureau of Transport and Regional Economics and the Australian Bureau of Agriculture and Resource Economics on the 350ML biofuels target set in 2001. The study will consider the latest evidence on the environmental and other benefits of replacing fossil fuels with biofuels. This report will be considering the regional impacts of the Government’s biofuels policy, which I would expect would include the issues covered by Senator O’Brien. A report produced by The Australian Lot Feeders Association has been made available to the officers conducting the study.

Senator O’Brien raised concerns that the 38.143 cent per litre production subsidy will give the ethanol industry and unfair competitive advantage over lot feeding enterprises. The 2003-04 Budget announcement extended the effective excise-free treatment of ethanol, which was due to end on the 18 September 2003, until 30 June 2008. It is unlikely that continuing the current excise-free treatment will have a greater impact on feed grain price or demand than the government’s previous arrangements, which did not cause any reported adverse impacts. Further, the excise-free treatment of ethanol will be phased out.
Return to Order

Senator COONAN (New South Wales—
Minister for Revenue and Assistant Treas-
urer) (3.03 p.m.)—by leave—I wish to re-
spond to an order of the Senate made last
Tuesday, 25 November, following a notice of
motion moved by Senator Bartlett that the
government table documents in relation to
deposit bonds by 3.30 p.m. today. The
documents requested by the Senate are any
documents prepared by the Australian Secu-
rities and Investment Commission, the Aus-
tralian Prudential Regulation Authority and
the Department of the Treasury in relation to
deposit bonds. The order also deals with
some other issues relating to deposit bonds.

In the context of responding to some of
the issues raised in the order, I would like to
make a few very quick general remarks. De-
posit bonds are a well-known credit instru-
ment that have been available for over a dec-
aade. They enable people to commit to the
purchase of an asset while delaying payment
of the deposit. In relation to property pur-
chases, they enable the purchaser to buy a
property at an auction without having to have
a large sum of cash with them for the deposit
or to commit to a new purchase before they
have sold their current residence. However,
deposit bonds have recently attracted atten-
tion through their use by some to speculate
on property prices, particularly through the
use of long-term deposit bonds.

Deposit bonds provide a form of credit
and regulation of credit products and prop-
erty, and they are traditionally the responsi-
bility of state and territory governments.
Credit is regulated by states and territories
under the uniform consumer credit code ad-
ministered by their fair trading agencies.
Real estate property is also regulated by state
and territory governments under each juris-
diction’s relevant real estate licensing legis-
lation, and I note that they derive substantial
ongoing revenues from duties and taxes on
property transfers, such as stamp duty and
property taxes. In fact, states will receive
$8.5 billion in stamp duty on property con-
veyances in 2002-03.

State and territory working groups are cur-
rently developing options for direct regula-
tion of mortgage brokers and property in-
vestment advisers. Clearly, direct regulation
of the marketing and use of deposit bonds is
a matter for state and territory governments
to consider. The Australian government has
been working with, and will continue to
work with, the states and territories to pro-
gress appropriate regulation of marketing
deposit bonds of property investment advis-
ers and other businesses through the Ministe-
rial Council on Consumer Affairs.

Turning to aspects of the order that require
me to table documents relating to deposit
bonds, I note that the scope of the Senate
order is very broad. It has sought in less than
a week any documents prepared by ASIC,
APRA and Treasury in relation to deposit
bonds. No time limit is indicated and so
documents from many years ago that may
have been archived will need to be searched.
I have made arrangements to try to access
these documents. Clearly it is a very onerous
and extensive task. Given that the order
ranges across three different agencies, it has
not been possible to assemble the documents
within this short time frame and it has cer-
tainly not been possible to consider them.
Nevertheless, APRA, ASIC and the Treasury
are searching their document holdings. I
wish to inform the Senate that, when this is
completed, I will be considering the docu-
ments and will seek to respond to the Senate
order as soon as I am able.
QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Aviation: Air Safety

Senator O’BRIEN (Tasmania) (3.06 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Local Government, Territories and Roads (Senator Ian Campbell) to questions without notice asked by Senators O’Brien, Mackay and Wong today relating to the new airspace management system.

I would have to say that, in the context of my experience travelling in regional Australia recently and actually talking to pilots who have a very negative view of the national airspace system and its so-called reform, the answers from the minister were as inadequate as the response of his senior minister to concerns about the government’s new airspace management system. It is the case that aviation safety is primarily the responsibility of the federal Minister for Transport and Regional Services, Mr Anderson. It is a responsibility that the current minister’s predecessors, both Labor and coalition ministers, have taken seriously. Regrettably, Mr Anderson mistakes bald assertion as a substitute for adequate assurance on the safety of the airspace system. More alarmingly, Mr Anderson attempts to distance himself from responsibility for the new system and what many industry members fear will be its inevitable consequence—a midair collision that costs lives.

Last Thursday, in the other place, Mr Martin Ferguson asked Mr Anderson to guarantee no increased aviation risk would result from this new system. It would have sent chills down the spine of any aviator and certainly of any air passenger who was listening when the minister refused to provide such an assurance. Rather than answer the question, in fact, Mr Anderson delivered a mini-treatise on the difficulty involved in quantifying the risk in aviation. For example, he said:

I hear claims about the inevitability of a mid-air crash and I think to myself that that would be a horrible outcome. It has been in the past ...

He went on later to say:

... it is not my job, my responsibility or my training to be able to advise on every technical aspect of safety.

Last Wednesday the minister went so far as to deny the system was his at all. He said:

Let me say at the outset that, while you call this my system, it is based on the North American system.

It is a remarkable performance by the minister, made more remarkable by his bold attempt earlier in the year to assert responsibility for aviation safety during the debate over the abolition of the CASA board. He said on 27 March:

The changes effected under this bill will provide stronger and more direct powers to the minister over CASA’s governance and accountability ...

That is quite a change of attitude in the space of eight months—and, given the seriousness of the airspace management issue, an alarming change. This morning, the front page of the Courier-Mail carries a direct quote from Mr Anderson’s spokesperson that confirms that increased risk was actually contemplated by the minister in the design phase of the new national airspace system. The spokesperson told the Courier-Mail:

“...it’s a new system and we fully expected an increased number of incidents,” ...

Not an initial number, but ‘we fully expected an increased number of incidents’. That is what the minister should have told the other place last Thursday when the opposition asked him to guarantee no risk at all—that is, that he fully contemplated an increased risk as a result of this new system. It is an outrageous admission by Mr Anderson. It pro-
vides some context to the minister’s failure to understand or care about the deep concern in the aviation community about his new national airspace management regime.

I also note that Senator Ian Campbell answered Senator Mackay’s specific question today about increased risk at airports in Hobart, Launceston and Alice Springs. As someone from northern Tasmania, I am concerned about the situation at Launceston airport. On Saturday the Launceston Examiner ran a story headlined ‘Midair crash worries’. It detailed concerns held by the Tasmanian Aero Club’s chief flying instructor, Maurie Duff, about the new system. Mr Duff said Launceston airport was less safe than before due to the adoption of the ‘see and avoid’ regime. Mr Anderson wants to avoid his responsibility for adverse consequences arising from the introduction of his new airspace regime. Labor urges this minister to open his eyes and ears, listen to professional pilots, air traffic controllers, airport operators and other industry representatives and, before it is too late, rethink his approach to airspace management. (Time expired)

Senator McGauran (Victoria) (3.11 p.m.)—The government seek in all earnestness to assure the industry and the travelling public that we take the safety of our skies deadly seriously. We in no way seek to jeopardise Australia’s excellent record. Senator O’Brien stands up here and seeks a guarantee from the minister of zero accidents happening, but that cannot be done under any system. For Senator O’Brien to throw down that red herring—and he knows that is what it is—just shows the reality behind the questions today: they are simply a political attack on the Minister for Transport and Regional Services and have nothing to do with the opposition’s deep concern about the air safety of Australia. Perhaps their next speaker will have a little more knowledge about the system, will spend less time attacking the minister and will talk more about the system than Senator O’Brien has today.

If you have a serious concern about the new national airspace system then bring it into the parliament—and do not bring your politics with it, because this is a very serious issue. The safety of our skies is not something to be thrown around and politicised. Once again you have handed an issue such as this to practically—and I only say practically—the greatest scaremonger on your front bench, and that is Senator O’Brien. He showed that he knows nothing about the detail of the issue but all about the possible politics of it. The government reject that sort of innuendo and scare tactic. As I said, we would like to assure the travelling public that this system is being introduced with the greatest consultancy across the whole industry. It is being monitored step by step, day by day, and it is being introduced cautiously. It is not being introduced all at once; it is being introduced in several stages over several years, and it will be monitored accordingly.

This is really just an attack on the transport minister—trying to pin a possible air crash upon the minister. What a disgraceful, desperate opposition we have. We know they are very desperate because they have got a big day tomorrow. So what do they do today? They want to try to distract everyone from tomorrow. Is that possible? They want to distract themselves from tomorrow. So they bring in a scare campaign of a possible air crash and try to hang it upon the minister. It just so happens that it was proven today by the minister, Senator Campbell, speaking on behalf of the Deputy Prime Minister and the Minister for Transport and Regional Services, that the figure of 20 new incidents—directly related, I suspect, to the national airspace system—that the union had fed to the opposition was false. There were not 20 at all; there were five. In fact, there were four
because one of those incidents did not relate to the national airspace system. There were four incidents, probably related to the fact that it is a new system. With any new system you are going to get some glitches. There were several other incidents. They were not the only air incidents that occurred and were reported. I do not have the figure here but I have some memory that there were dozens and dozens of other incidents related to other specific air occurrences. They bring into this chamber a great beat-up to try to attack a long-serving minister of credibility and experience who has introduced an integrated transport system with regard to AusLink. He has overseen this particular industry and has made assurances that he is daily monitoring this new national airspace system.

Senator STEPHENS (New South Wales) (3.16 p.m.)—I too rise to take note of the answers provided to the questions during question time about the national airspace system. I note that Senator McGauran hopes people are deadly serious about this issue—and that is a terrible pun. This is an issue that is of grave concern to me, without intending a pun. I do not think that anyone can take this issue more seriously than those people who are trying to implement the system. Despite the minister’s protestations there have been 20 incidents involving Australia’s downgraded airspace that have been reported by air traffic controllers. You cannot deny the obvious.

I have tried to get my head around the situation, Senator McGauran, and I can refer you to the web site if you like, but I understand that light aircraft, many without working transponders and with pilots on the wrong frequencies, are straying into tightly controlled international and domestic capital city flight paths. We know that the air traffic controllers in Sydney, Brisbane, Perth, Adelaide and Melbourne are reporting around four transponder failures an hour to the Australian air traffic control association, Civil Air, despite the marked drop in light aircraft movements nationally since the downgrading of Australia’s airspace last Thursday.

I particularly want to raise an issue that occurred at Tamworth on the weekend. Perhaps Senator McGauran is not aware of this. In Tamworth in the north-west of my own home state of New South Wales a disaster was narrowly averted on the weekend. As I understand it, a commercial plane carrying 30 passengers was on its final descent into Tamworth airport. Apparently, the air traffic controllers were unaware of the small private aircraft that was also descending at that time. The controllers in Tamworth were only made aware of the impending collision when the private pilot actually contacted them to advise of his impending approach. Clearly, this Tamworth example shows that there are major problems with the NAS and that the implementation has been bungled by the minister.

Going to the web site today, I read again:

This document should be read in conjunction with the AICs 7, 8, 9, 10/03. It will help explain the AIP amendment effective 27 November as part of the ongoing airspace reform.

We struggle with the fact that there are many, many people who still have not even got the information that is supposed to have been made available to them. The line controllers have told Civil Air that light aircraft are now posing a serious increasing collision threat to commercial traffic, and that should be of concern to all of us. The Civil Air President, Ted Lang, said yesterday:

It has become a serious operational problem for the controllers and a serious worry for commercial aircraft pilots.

He goes on to say:

It appears some light aircraft pilots are confused about where the downgraded airspace starts and stops and the procedures.
I understand that urgent alerts by air traffic controllers in each city have gone unanswered. Because of the blundering of Mr Anderson’s department we have maps being issued to light aircraft pilots which no longer provide frequency information. These factors could lead to light aircraft unknowingly being in the wrong place at the wrong time, and if that place is in the path of another aircraft, particularly a passenger airline, the results could be tragic and catastrophic. As we heard today in question time, according to Civil Air, Qantas and Virgin pilots at all airports are now repeatedly asking for light aircraft heights and information to assist in collision avoidance.

It is too late for Mr Anderson to admit that the NAS has some serious flaws and it is too late to halt the rollout of the NAS. But it certainly is not too late for the minister to sit down with those in the industry who do not necessarily share his views. Let us hope that before it is too late Mr Anderson can overcome his arrogance and start working with the industry to build a safe alternative to the current NAS. (Time expired)

Senator JOHNSTON (Western Australia) (3.21 p.m.)—Senator Stephens is a very conscientious and a most learned senator in this place and she brings a lot of knowledge to very many subjects, but, unfortunately, this is not one of them. Senator O’Brien did not mention one single aspect of the practical application of the new National Airspace System. If you work it out—and it is a simple arithmetical situation—anybody who knows anything about air safety knows that there are over 1,000 air safety incidents per annum. We have had five since Thursday, which equates roughly to about 500 and—guess what?—that means the figure is almost half of that which you would expect. So before question time today, obviously in the turmoil and ructions going on on the other side of the chamber, things were at a loose end and someone said, ‘What will we ask our questions about today?’—Someone else said, ‘I saw something about an incident in Tamworth, so let us have a go at that.’ This is a very desperate attempt to undermine an industry that is very vulnerable.

Let us take two airlines that have come through the maelstrom of SARS and a tourist decline and increased costs. Skywest in Western Australia is battling against all sorts of odds and doing an absolutely sensational job. The management skills being displayed in these very difficult circumstances by that regional airline are outstanding. Rex, a new concept—an amalgamation of a couple regional airlines in the eastern states—are also looking good. I wish them the very best and hope that they can continue to provide the outstanding service they do to a broad number of regional centres throughout the eastern states of our nation.

Here today we have got a very cheap, opportunistic and quite irresponsible attack on air safety, beating it up over and above the real facts and the truth of the matter. It is absolutely outrageous. What sort of system is being used in the busiest light aircraft region in the world, in the United States? The system that operates safely and efficiently in the world’s leading aviation nation, the United States, is—guess what?—the system that has just commenced: the National Airspace System reform that was introduced last Thursday. So what do we have today? We have a new system and an opposition seeking to undermine it. That is fine and that would be all right but for the fact that it is quite unnecessary to spread the sort of undermining panic and make such an irresponsible attack on an industry that must have confidence and a high degree of safety. The very last thing that this industry needs is the opposition coming into this chamber seeking to put the frighteners on the travelling public just for
cheap political advantage. It is absolutely outrageous.

We had the unions the other day saying that there would be delays caused upon implementation. Newspaper articles were saying that the unions were claiming that the introduction of NAS stage 2b will cause massive delays in airports across Australia. Guess what? Thursday came, Friday came—no delays. It was a complete and utter beat-up by a number of irresponsible unions that were not even prepared to give the new system a decent chance to operate but took a view that the whole thing was not going to work.

Major regional airlines have accepted that this system is going to enhance the operation of commercial airlines in conjunction with light aircraft, particularly in regional airports throughout Australia. Senator Stephens failed to acknowledge what the old system was. Under the old system light aircraft would put out a SAR watch and would file a flight plan and would send out a two-way radio broadcast upon approaching a particular frequency for a particular regional airport. That was the way that communications were carried out. Transponders will obviously assist in the situation, but we are going from 1,000 safety incidents per annum down to approximately the current figures as they now stand. (Time expired)

Senator BUCKLAND (South Australia) (3.26 p.m.)—I too rise to take note of the answers given by Senator Ian Campbell to questions asked by Senator O’Brien earlier today. The government’s National Airspace System, NAS, has been an ongoing farce—a fact demonstrated by the very heated reception it has received from the aviation industry. The extent of this farce became apparent when on 11 November this year—just 16 days before NAS was to take effect—the shadow transport minister, Mr Martin Ferguson, revealed that pilots across the country were still to receive their training material. On 11 November Mr Ferguson revealed that Labor had been advised that around 7,500 pilots from the Australian Ultralight Federation and the Gliding Federation of Australia had not received the training material they would need to operate under the new airspace system.

Labor has been extremely concerned that the NAS will jeopardise aviation safety in Australia. If the protests of the industry are anything to go by, we may be proved—most unfortunately, of course—to be correct. Let us hope that that is not the case. This blunder came on top of the refusal of the minister to address the serious and legitimate safety concerns of the aviation industry about the NAS and the release of aviation maps relating to the NAS, the missing vital radio frequency information.

The Minister for Transport and Regional Services keeps saying that the National Airspace System is safe but he has yet to demonstrate this, especially to large numbers of our aviation professionals. He continues to ignore the legitimate concerns of the aviation industry and continues to blunder, delivering pilot training material less than 16 days before pilots are expected to use the new system. How much of a bigger farce can the National Airspace System implementation become before the minister for transport takes industry concerns seriously and before he halts the implementation and deals with the airspace reforms in the interest of aviation safety and the integrity of our airways?

It is not only the industry that is concerned. In an email obtained by Labor, Australia’s head air traffic controller told senior managers of the Air Force, Defence and others that the NAS implementation ‘probably took us back 20 years or so’. The email goes on to say:
It is a joke. The whole fabric of airspace management in Australia that you and I and our predecessors established and strive to maintain has been destroyed.

This is an unequivocal condemnation of the minister’s failure to take airspace reform seriously and address the legitimate safety and efficiency concerns regarding the new system. Instead, the minister appears intent on ramming home Dick Smith’s airspace model—oblivious to public and industry concerns about the safety and efficiency of the new system. The minister for transport still refuses to listen to the concerns of the aviation industry, not to mention the concerns of one of his chief aviation safety bureaucrats. Labor know that the industry and travelling public are greatly concerned about these changes because many who have written to the minister have copied their correspondence to the shadow minister, Mr Martin Ferguson. In an unprecedented and dangerous approach, the minister has been prepared to listen only to those who agree with him. This is the safety of Australian air travellers we are talking about—(Time expired)

Question agreed to.

Automotive Industry: Tariffs

Senator RIDGEWAY (New South Wales) (3.31 p.m.)—I move:

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

I am concerned about the minister’s lack of response, particularly in terms of giving some security and certainty to the industry as it relates to the Australia-US free trade agreement. It goes without saying that the Australian automotive industry plays a vitally important role in the Australian manufacturing sector. It employs more than 50,000 people and produces a turnover of around $17 billion per annum. The industry has been transformed over the last decade from a highly protected industry with tariffs of around 55 per cent and very low levels of export to an efficient, profitable industry that exports more than 30 per cent of its production—around $5 billion worth.

The government recently introduced changes to the Automotive Competitiveness and Investment Scheme to extend the scheme beyond December 2005. The changes that were introduced, with the support of the Australian Democrats, were as a result of the recommendations of a review into the industry conducted by the Productivity Commission and lengthy negotiations with the industry. The outcome was widely supported by the industry and was certainly reflected in its input into the Economics Legislation Committee’s investigation of the ACIS amendment bill. The Senate subsequently passed the bill, and the industry assistance measures are due to commence a year from now—unless they are completely undermined by the free trade agreement. Reports in today’s Australian Financial Review reflect the industry’s concerns that the free trade deal could cut tariffs much more quickly than currently agreed under the ACIS scheme. The article reflects the concerns of certain parts of the automotive industry that if the government cuts tariffs too quickly it might have a devastating impact on the ability of automotive manufacturers to adjust and survive in a shorter time frame.

This week is the last week of negotiations in relation to the Australia-US free trade agreement. The Australian and US governments are sitting down to try to get an agreement signed by Christmas. Of concern is the effect on our automotive industry of what chips are put on the table and traded as part of these discussions—which do not seem to be as open and transparent as they ought to be. The government may end up
sending a very poor message to the automotive industry, abandoning its commitment to the industry to stick to the agreed time frames for tariff reduction and failing to recognise that, given that there has been this industry agreement, many Australian car companies have made strategic investment decisions and research and development decisions on the basis of a longer period—not what the government is currently proposing in relation to the free trade agreement. So the potential damage of a free trade agreement is difficult to quantify.

What is certain is that we could stand to lose a great deal if this agreement is not done correctly and if the government does not give assurances to our automotive industry, where there has been agreement. Concerns have been expressed today, particularly by Mitsubishi in South Australia, and Toyota Australia. The free trade agreement cannot address critical issues such as domestic agricultural subsidies, which have to be dealt with under the WTO at a multilateral level. The free trade agreement can, in my view, deal with tariffs and quotas in key areas but Australia already has relatively low tariffs on agricultural and manufactured goods. Further tariff reductions in sectors such as the automotive or textile industries could result in job losses in predominantly regional areas and, because Australian jobs may be at risk, this will have an impact on social policy. The ancillary businesses associated with car manufacturing in this country may also be put at risk. A key fear is the flow-on effect. Social outcomes, health outcomes and so on may be compromised in order to achieve limited gains under the free trade agreement.

First and foremost, the government has to declare that it must retain the right to regulate. Australians are justifiably concerned that the government is locking us into an agreement that will have a serious impact on our right to determine our national interest, both now and in the future. It goes without saying that, if the industry has made some very clear strategic decisions, we ought to be giving the industry support and the government ought to be sending a very positive message that it is not sure what the outcome will be. It has already committed to a further review by the Productivity Commission. We ought to make sure that review occurs in the years to come so that our industries survive. The very least we can do is send such an important and positive message to our car industry.

If a free trade agreement is going to be put in place, let us keep in mind that we need to look after our interests first, and not forsake them for small or short-term gains as a result of a free trade agreement that may not produce what the government believes is in the wings. It comes down to making sure that the government shows the right sort of leadership on this issue. So far the parliament has been excluded from the process of being able to ratify—(Time expired)

Question agreed to.

PETITIONS

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

Australian Broadcasting Corporation: Funding

To the Honourable Members of the Senate in the Parliament Assembled.

The Petition of the undersigned draws attention to the recent Government funding cuts to the ABC resulting in the substantial reduction of the educational programming budget and the axing of the popular educational show “Behind the News”.

“Behind the News” has been providing valuable information to students since 1969 in a format they can understand and deal with in a non-threatening way and represents a cost effective and valuable teaching aid for teachers and students across Australia.
ABC is the only national network that has devoted significant resources to educational broadcasting. As well as the axing of “Behind the News”, a further $1 million has been cut from the ABCs educational programming budget, impacting considerably on available teaching resources.

It is regrettable that the ABC Board has chosen to reduce its commitment to educational programming at this time, and a matter of deep concern that the ABC has indicated an insufficient provision of government funding as the cause.

Your petitioners ask the Senate in Parliament to call on the Federal Government to reverse the recent funding cuts to the ABC to enable the ABC to restore the educational programming and allow for the immediate re-instatement of “Behind the News”.

by Senator Bartlett (from 13,512 citizens).

Defence: Involvement in Overseas Conflict Legislation

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

The Petition of the undersigned calls on the members of the Senate to support the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas conflict) Bill introduced by the Leader of the Australian Democrats, Senator Andrew Bartlett and the Democrats’ Foreign Affairs spokesperson, Senator Natasha Stott Despoja.

Presently, the Prime Minister, through a Cabinet decision and the authority of the Defence Act, has the power to send Australian troops to an overseas conflict without the support of the United Nations, the Australian Parliament or the Australian people.

The Howard Government has been the first Government in our history to go to war without majority Parliament support. It is time to take the decision to commit troops to overseas conflict out of the hands of the Prime Minister and Cabinet, and place it with the Parliament.

by Senator Bartlett (from 52 citizens).

Australian Broadcasting Corporation: Independence and Funding

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

The petition of the undersigned calls on the Federal Government to:

i. ensure the independence of the ABC Board;

ii. provide an immediate increase in funding to the ABC in order that the ABC can make the transition to digital technology without undermining existing programs (such as Behind the News and Fly) and services (such as the cadet training scheme);

iii. support ABC journalists when they are charged with unsubstantiated claims of political bias;

iv. provide the ABC with sufficient funds to produce high quality Australian drama;

v. ensure that the Australian Film and Television industry is fully protected during negotiations over Free Trade Agreements; and

vi. protect the ABC from any need to carry on-air advertising.

by Senator Boswell (from 305 citizens).

Education: Higher Education

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

The Petition of the undersigned draws to the attention of the Senate concerns that proposed changes to the tertiary education sector will negatively impact on higher education campuses. Your petitioners oppose:

(a) any increase in HECS;

(b) any increase in the number of domestic full-fee paying students at university;

(c) loans for full-fee paying students of up to $50,000 which bear 3.5% interest above inflation;

(d) a 5 year time limit for degree completion, with penalties for failing subjects or changing courses;

by Senator Bartlett (from 13,512 citizens).
(e) the reduction of student, staff and community representation on university governing councils;

(f) forcing universities to dismantle collective bargaining for staff by tying university funding to Australian Workplace Agreements (AWAs);

(g) restrictions of the right of university staff to take legitimate industrial action in contravention of International Labour Organisation (ILO) conventions.

Your petitioners therefore request the Senate to act to ensure these measures are not introduced, and that any Bill to enact them is rejected.

by Senator Carr (from 7,794 citizens).

Immigration: Asylum Seekers
To the Honourable the President and the Members of the Senate in Parliament assembled:
Whereas the 1998 Synod of the Anglican Diocese of Melbourne carried without dissent the following Motion:
That this Synod regrets the Government’s adoption of procedures for certain people seeking political asylum in Australia which exclude them from all public income support while withholding permission to work, thereby creating a group of beggars dependent on the Churches and charities for food and the necessities of life;
and calls upon the Federal government to review such procedures immediately and remove all practices which are manifestly inhumane and in some cases in contravention of our national obligations as a signatory of the UN Covenant on Civil and Political Rights.

We, therefore, the individual, undersigned attendees at the Unitarian Church, East Melbourne, Victoria, 3002 petition the Senate in support of the abovementioned Motion.

And we, as in duty bound will every pray.

by Senator Carr (from 27 citizens).

Military Detention: Australian Citizens
To the honourable President of the Senate, Canberra.

We the undersigned respectfully request that this petition be tabled for the government and members of the Senate to consider.

This petition requests that the government work to ensure that Australian national David Hicks and five other detainees at Guantanamo Bay named under a military order receive a fair trial instead of a military commission proposed by the US government. Military trials of Mr Hicks and the five others would flout basic standards of justice as well as the 1949 Geneva Convention

by Senator Sandy Macdonald (from 45 citizens).

Medicare
To the Honourable President and Members of the Senate assembled in Parliament.
The petition of the undersigned citizens of Australia draws to the attention of the Senate:

The need to retain and extend the universal public health insurance system Medicare by:
• restoring bulk billing for all
• increasing financial support to the public hospital system
• switching to the public Medicare system the $3.6 billion currently used to prop up the private health insurance industry

by Senator Nettle (from 1,900 citizens).

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by Senator Nettle (from 1,900 citizens).
We therefore pray that the Senate opposes the introduction of cuts to Medicare services limitations on its coverage and the introduction of up-front fees for GP visits.

by Senator Nettle (from 4,291 citizens).

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

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

Your petitioners believe:
(a) fees are a barrier to higher education and note this is acknowledged by the Government in the Higher Education at the Crossroads publication (DEST, May 2002, Canberra, para 107, p. 22);
(b) fees disproportionately affect key equity groups—especially indigenous, low socio-economic background and rural, regional and remote students—and note, participation of these groups improved from the early 1990s until 1996 but have subsequently fallen back to about 1991 levels (lower in some cases) following the introduction of differential HECS, declining student income, support levels, lower parental income means test and reduction of Abstudy;
(c) permitting universities to charge fees 30% higher than the HECS rate will:
   a. substantially increase student debt;
   b. negatively impact on home ownership and fertility rates;
   c. create a more hierarchical, two-tiered university system; and
(d) expanding full fee paying places will have an impact on the principle that entry to university should be based on ability, not ability to pay.

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

by Senator Stott Despoja (from nine citizens).

Petitions received.

NOTICES
Presentation
Senator Ridgeway to move on the next day of sitting:
That the Senate—
(a) notes that:
   (i) the final round of formal negotiations for the proposed Australia-United States (US) free trade agreement are being held in Washington, in the week beginning 30 November 2003, and
   (ii) both the Australian Government and the US Government have indicated that they are seeking to conclude this agreement before Christmas 2003;
(b) notes further that:
   (i) the Foreign Affairs, Defence and Trade References Committee tabled the report Voting on trade: The General Agreement on Trade in Services and an Australia-US free trade agreement on 27 November 2003, and
   (ii) a key recommendation of this report was that Parliament should have a greater role in developing and voting on major international trade agreements; and
(c) calls on the Government to recall Parliament once the negotiations have concluded, to scrutinise and debate the finalised text of the proposed Australia-US free trade agreement and vote on whether or not it should be signed.

Senator Ian Campbell to move on the next day of sitting:
That, on Tuesday, 2 December 2003:
(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to adjournment; and
(b) the question for the adjournment of the Senate shall be proposed at 10.50 pm.

Senator Ridgeway to move on the next day of sitting:
That the time for the presentation of reports of the Rural and Regional Affairs and Transport References Committee be extended as follows:

(a) forestry plantations—to 11 March 2004; and
(b) rural water resource usage—to 1 April 2004.

**Senator Cook** to move on the next day of sitting:

That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Tuesday, 2 December 2003, from 7.30 pm to 8.30 pm, in relation to its inquiry on the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002.

**Senator Kemp** and **Senator Lundy** to move on the next day of sitting:

That the Senate—

(a) congratulates Steve Waugh on his achievements and service to Australian cricket throughout his time as captain and player in the Australian team, and notes his retirement from international cricket;
(b) notes that Steve Waugh has been Australia’s most successful captain and most ‘capped’ player and has guided Australian cricket through arguably its most successful period;
(c) congratulates Steve Waugh for being an outstanding role model for Australian youth and for his important role in fostering participation in junior cricket;
(d) congratulates Steve Waugh on his involvement in charitable causes both in Australia and overseas;
(e) acknowledges and supports the contribution of the Australian Sports Commission to the development of young Australian cricketers, particularly through the Australian Institute of Sport cricket program; and
(f) notes the deep commitment held by Australians to cricket and supports the Commonwealth in its endeavours to support Australian cricket.

**Senator Kemp** to move on the next day of sitting:

That the Senate—

(a) congratulates the captain of the Australian Davis Cup tennis team, John Fitzgerald and finals players Lleyton Hewitt, Mark Philippoussis, Todd Woodbridge and Wayne Arthurs on the exceptional win in the final of the 2003 Davis Cup against Spain;
(b) congratulates all other team members for their outstanding contributions to the team effort and all others involved in supporting the Australian team over the course of the 2003 Davis Cup campaign;
(c) notes that the win by the Australian team is the 28th time that Australia has secured the Davis Cup;
(d) congratulates the members of the team for the inspiration their win will provide to Australian youth and the impact their efforts will have in fostering participation in junior tennis; and
(e) acknowledges and supports the contribution of the Australian Sports Commission to the development of young Australian tennis players, particularly through the Australian Institute of Sport tennis program and its support for Tennis Australia’s participation partnership program, ‘Tennis over Australia’.

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

That the Senate—

(a) notes:
(i) the recent launch of the report, *Not a minute more: Ending violence against women*, by the United Nations Fund for Women,
(ii) that the report was launched to mark the 10th anniversary of the Vienna World Conference on Human Rights,
when women’s rights were placed on the international agenda for the first time, and
(iii) that Australian women are still subjected to violence; and
(b) urges the Government to demonstrate leadership by encouraging reform of Australia’s legal and criminal justice system, to break down the structures and processes that generate violence.

Senator Brown to move on the next day of sitting:
That the Senate calls on the Government to:
(a) immediately close the detention centres on Nauru and Manus Island and bring all detainees to mainland Australia;
(b) immediately release children and their families from asylum-seeker detention centres in Australia;
(c) end the temporary protection visa system, and instead provide permanent protection for proven refugees; and
(d) introduce a process involving humanitarian visa solutions for those stuck in limbo in long-term detention.

Postponement
Items of business were postponed as follows:

General business notice of motion no. 646 standing in the name of Senator Allison for today, relating to a resolution concerning the ethanol industry, adopted at the National Party’s Federal Conference, postponed till 11 February 2004.

Withdrawal

Senator HUTCHINS (New South Wales) (3.39 p.m.)—I understand that both the minister for sport and the shadow minister for sport have drawn up a notice of motion similar to mine in relation to Steve Waugh, the Australian cricket captain. On that basis, and in the interests of bipartisanship, I withdraw general business notice of motion No. 723 standing in my name for today.
Question negatived.

RACIAL AND RELIGIOUS HATRED BILL 2003

First Reading

Senator LUDWIG (Queensland) (3.49 p.m.)—I move:
That the following bill be introduced: a Bill for an Act to amend the Crimes Act 1914, and for related purposes.

Question agreed to.

Senator LUDWIG (Queensland) (3.49 p.m.)—I move:
That the bill may proceed without formalities and now be read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator LUDWIG (Queensland) (3.50 p.m.)—I move:
That this bill be now read a second time.

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

Leave granted

The speech read as follows—

RACIAL AND RELIGIOUS HATRED BILL 2003

Racial and religious hatred has no place in Australian society.
The deliberate incitement of racial and religious hatred is a clear threat to Australia’s social stability.
Such threats force many of our fellow Australians to live in fear and insecurity, and are often a precursor to racial or religious violence.
All Australians have seen this vividly in the terrorist attacks sponsored by al Qaeda and associated groups before and since September 2001, which had their origins in fanatical religious hatred.
Those attacks, and the reactions they have provoked among some citizens and communities in western nations, have highlighted that no group is immune from the consequences of racial or religious incitement.
It has long been the conviction of the Australian Labor Party that incitement or threats based on racial or religious hatred should incur the strongest possible legal sanction.
While our federal and state criminal laws address acts of violence—including terrorism—a gap remains under federal law when it comes to behaviour that is often a precursor to violent, including terrorist, activity motivated by racial or religious hatred.
The Bill I present today seeks to close that gap.
The Bill would create three new offences under the Commonwealth Crimes Act of:

1. threatening to cause physical harm to another person or group because of their race, colour, religion or national or ethnic origin;
2. threatening to destroy or damage property of a person or group because of their race, colour, religion or national or ethnic origin;
3. engaging in public acts that have the intention and likely effect of inciting racial or religious hatred against a person or group.

Each of these offences would carry a maximum penalty of imprisonment. The Bill makes clear that it is not intended to exclude or limit the concurrent operation of any state or territory law.
Substantially the same offences were proposed as part of the Racial Hatred Act 1995, but were opposed by the Greens and the Opposition in the Senate.
Comparable offences were also proposed as part of the original Racial Discrimination Act 1975, but were blocked by the Opposition in the Senate on that occasion too.
Equivalent offences exit in almost every State and Territory, as well as the United Kingdom, Canada and New Zealand and a number of states in the
United States—yet almost thirty years after the Racial Discrimination Act was passed, they are still absent from federal law in Australia.

This Bill would implement one of Australia’s obligations under Article 4(a) of the UN Convention on the Elimination of All Forms of Racial Discrimination to, and I quote:

declare an offence punishable by law ...all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.

It is always important to consider the effect of legislation of this kind on Australians’ freedom of political communication, implied in our Constitution.

We are confident that this legislation is constitutional.

The High Court has held that a law cannot restrict freedom of political communication unless it is enacted to fulfil a legitimate purpose of Australia’s constitutional system, and the restriction is appropriate and adapted to fulfilment of that purpose.

In most cases, the type of conduct targeted by this Bill will be devoid of political content and will not constitute political communication for the purposes of the Constitution.

Even if the incitement is combined with criticism of government or other comment on political matters so as to amount to political communication, I believe these offences are appropriate and adapted to protect Australians from violence and other serious harm flowing from incitement and threats based on racial or religious hatred.

By way of comparison, equivalent offences in the Criminal Code of Canada were upheld by the Supreme Court of Canada in the 1990 case of R v Keegstra on the basis that while they infringed the right to freedom of expression in the Canadian Charter of Rights and Freedoms, they were, and I quote:

demonstrably justified in a free and democratic society.

Similarly, this Bill is an appropriate and balanced response to an identified gap in the legal protection of all Australians from threats based on racial or religious hatred. It targets threats which are a precursor to violence and sends clear warning to those who might attack the principle of tolerance that all Australians cherish.

I commend the Bill to the Senate.

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

Leave granted; debate adjourned.

COMMITTEES

Economics Legislation Committee

Meeting

Senator FERRIS (South Australia) (3.50 p.m.)—At the request of Senator Brandis, I move:

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.

Question agreed to.

DEPARTMENT OF THE TREASURY

Senator CONROY (Victoria) (3.50 p.m.)—I move:

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).

Question agreed to.

IRAQ

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.51 p.m.)—I move:

That the Senate—

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

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

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

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

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

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

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

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

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

Question negatived.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Meeting

Senator MACKAY (Tasmania) (3.51 p.m.)—At the request of Senator Buckland, 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 on Monday, 1 December 2003, from 4 pm to 9 pm, to take evidence for the committee’s inquiry into the administration of the Australian Transport Safety Bureau in relation to the crash of Whyalla Airlines aircraft VH-MZK on 31 May 2000.

Question agreed to.

ASIO, ASIS and DSD Committee

Extension of Time

Senator FERGUSON (South Australia) (3.52 p.m.)—I move:

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.

Question agreed to.

HUMAN RIGHTS: FALUN GONG

Senator STOTT DESPOJA (South Australia) (3.52 p.m.)—by leave—I move the motion as amended:

That the Senate—

(a) notes that:
(i) close relatives of Australian citizens are currently being detained by the People’s Republic of China on the basis that they practise Falun Gong, and

(ii) the International Covenant on Civil and Political Rights applies to the treatment of Falun Gong practitioners worldwide;

(b) expresses its support for an open and effective human rights dialogue between Australia and the People’s Republic of China;

(c) calls on the Australian Government, in the context of the human rights dialogue, to:

(i) raise the issue of the continued detention of Falun Gong practitioners with close family ties to Australia, and

(ii) emphasise that the practise of religion should not form the basis of the incarceration of any individual; and

(d) reaffirms its commitment to freedom of belief within Australia and recognises the freedom of Australians to practise Falun Gong without fear of harassment.

Question agreed to.

MATTERS OF URGENCY

Housing: Affordability

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 1 December, from Senator Bartlett:

Dear Mr President,

Pursuant to standing order 75, I give notice that today I propose to move:

“That, in the opinion of the Senate, the following is a matter of urgency:

The need for the Federal Government to adopt a national housing strategy to address the crisis in housing affordability taking into account the concerns expressed by the Reserve Bank of Australia regarding the impact of negative gearing, instruments such as deposit bonds and the federal tax system.”

Yours sincerely,

Andrew Bartlett

Leader of the Australian Democrats Senator for Queensland

Is the proposal supported?

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

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

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.54 p.m.)—I move:

“That, in the opinion of the Senate, the following is a matter of urgency:

The need for the Federal Government to adopt a national housing strategy to address the crisis in housing affordability taking into account the concerns expressed by the Reserve Bank of Australia regarding the impact of negative gearing, instruments such as deposit bonds and the federal tax system.”

The issue of housing affordability is a crucial matter of urgency for this nation. There has been a crisis in relation to the growing affordability of housing for Australians for some time—for people trying to purchase a home, people trying to rent a home and people trying to access public and community housing. Housing is a basic human need as well as an important way in which Australians have achieved social stability and financial security. The federal government has a responsibility for the economic settings that impact on housing.

The Democrats believe that it is urgent that we have a national housing strategy, particularly given that we have to address the crisis in housing affordability. What we have seen to date is the government sitting on the sidelines, watching, occasionally commenting when the call goes their way and interest
rates are low, but for the most part doing nothing—and certainly doing nothing that constitutes a comprehensive national strategy. There is no forward plan and no intention of intervening to fix the growing problems of affordability for new home owners and for renters.

Emerging data on the composition of home ownership shows that there is a slow decline in home ownership, that first home owners are becoming older and that many more renters are spending longer in the rental market. There are many Australians—and a growing number of them—for whom home ownership is a long way out of reach. They too are potentially first home owners if the economic, employment and subsidy settings are right. Indigenous Australians are amongst the most poorly housed and are least likely to achieve home ownership.

It is not just a matter of being able to afford a home; it is a matter of being able to access housing in an area close to employment opportunities and services. The issue of housing poverty involves not only how much it costs to be able to keep a roof over your head but also where you are forced to live in terms of the opportunities for how you live your life and the opportunities you can provide for your family and your children.

There are many structural problems and issues that need a national approach and clear leadership from a federal government level if they are going to be seriously addressed. Labour market change is impacting significantly on the ability of low-income Australians to achieve home ownership. Casual and impermanent jobs make it hard for people to afford home ownership or to pay the rent.

The taxation treatment of investment housing has fuelled the housing market, driving up prices. There can be no doubt about that. The Reserve Bank’s submission to the Productivity Commission inquiry reinforces it. The government can no longer ignore this issue by saying, ‘It’s just the Democrats and a few fringe people saying that taxation treatment of investment is a problem and that negative gearing is a problem.’ The Reserve Bank is saying that negative gearing is a problem. It is not saying that we should abolish it—and nor are the Democrats. But we are saying it is a problem in conjunction with other aspects of the tax treatment of investment housing that needs to be acknowledged and addressed. It cannot just be ignored, particularly given the clear role it is playing in the current housing boom and the current situation where housing is becoming unaffordable for many Australian families. In the Democrats’ view, negative gearing should be reformed: tax losses from property income should be quarantined and offset only against future property income. Capital gains tax on investment housing should also be reformed and concessions removed.

Housing affordability for the September quarter was at its lowest level ever, despite all the commentary—and quite understandable commentary—from the government about the enormous interest rates that home buyers paid under Labor governments, especially under the regime at the time when Keating was Treasurer. That is an appropriate point to make, but there is more to housing affordability than interest rates, particularly given that the boom in housing prices has now led to interest rates going up in Australia whereas, if they were following international trends, they would actually be going down. That is not just costing home buyers and people with mortgages; it is putting Australian investors at risk if they overextend their debt and it is costing Australian exporters by driving the price of the Australian dollar up.

Housing affordability is now lower than in 1989. The obvious reason for the decrease in
affordability is the increase in house prices. Capital city prices are up nearly 30 per cent and in regional areas up 31½ per cent in the last year. The median first-home price is $320,700. House prices have doubled in five years and inflation has been around three per cent over this time.

The reason for the increase in house prices is the role of investors. Lending for investment housing is now about $5.5 billion a month, up 36 per cent in the last year alone. Prior to the capital gains tax changes that went through in this place with the joint support of the Labor Party and the Liberal Party, it was less than $2.5 billion. I am not against people being able to make money out of investing in housing, let me make that clear, but I do have concerns when the ability of somebody to buy a house simply for them and their family to live in—somewhere that is close to services, jobs and other opportunities—is lost because of people making money out of housing. The first priority in housing has to be to provide a home for people to live in—a secure, affordable, appropriate home—and then we can have people also making money out of investing. But if investing gets in the way of people being able to just get a home to live in then things are out of kilter, and that is what is happening now.

That is why we need a national approach on this issue. There is no single answer, but we will not be able to even start to address the issue properly unless we get a national approach, and we need that urgently. That is why the Democrats are bringing this matter forward this afternoon. We call on the government to take it seriously and to work cooperatively, as the Democrats are, to try to find different approaches and solutions and to see if we can turn around this problem of the lack of affordability of housing for a growing number of Australians.

**Senator FERGUSON** (South Australia) (4.01 p.m.)—I listened carefully to what Senator Bartlett had to say in relation to what he perceives to be the crisis in housing affordability. If you were to listen carefully to what Senator Bartlett said, you could come away with the impression that every house that was bought on the open market was bought by an investor who wanted to make money. In fact we all know, of course, that a vast majority of the houses that are bought in the Australian market are bought by home owners who live in those homes. Senator Bartlett talks about home ownership getting out of the reach of ordinary Australians. In fact, if you look back through Australian history, home ownership has always been out of the reach of some Australians, which is something that we need to remember. We also need to remember that in Australia home ownership is at a far greater level than it is in many other countries in the world. In many countries of the world, people do not even have the dream of owning their own home or living in the sort of comfort that many Australians live in.

The question we really need to ask is: why are these house prices at the level they are, particularly those paid by people who are buying houses to live in themselves? The reason they are at that level is that there are two or more people who are prepared to pay that sort of money for a house to live in themselves. That is why home prices are at the level they are at present. It is not because they are artificially put there but because there is more than one person who wants to pay almost that amount of money for the house that they are looking to buy. If you want to take that out of the system, then you want to go to the old Eastern bloc countries where housing was always provided by the government and you waited your turn and it did not matter whether you could afford anything or not.
Senator Bartlett raises the issue of negative gearing. Negative gearing is always the old chestnut. Whenever house prices go up, it is said to be these terrible investors who are negatively gearing their purchases who are forcing up the prices of properties and, because of the taxation arrangements that are in place, getting an enormous return over those people who would choose to buy their own home and live in it themselves. If we want to talk about doing away with negative gearing as we know it in the housing market, we need only look back to the one time in recent history when negative gearing was abolished. It was abolished in the June quarter of 1985 by the Hawke Labor government and reinstated in the June quarter of 1987—a two-year period when there was no negative gearing. And what happened in that period when negative gearing was abolished? Rents increased by 37 per cent across Australia during that period. For example, the average rent for a three-bedroom house in Sydney rose from $160 a week in June 1985 to $252 a week in June 1987—a 57½ per cent increase in the two years that negative gearing was abolished, which decreased the number of rental homes that were available and so pushed the price up.

Is this what Senator Bartlett wants? Does he want us to do away with the taxation treatment of negative gearing so that rents can be pushed up and put out of the range of those Australians he talks about who find home ownership unaffordable and so that rental properties become so expensive that it makes it more difficult for them to even rent a home on the weekly budget that they live on? Would it be fair to restrict deductions for interest paid on rental property loans while we allow for deductions for interest on loans for other purposes such as, currently, people who take out loans to purchase shares or other investments? Are we going to particularly single out the housing industry as the one area where we are not going to allow negative gearing to exist? In spite of Senator Bartlett talking about quarantining it against future capital losses, it is what happens at that time that impacts directly on housing, not what may happen at any time in the future.

Negative gearing does not arise from any specific provisions in the taxation legislation. Rather, where interest is paid on money borrowed for acquiring a rental property, a deduction is allowable under the general deduction provisions. It is not a specific provision just for housing. It flows from the general principle that tax deductability is allowed for and generally limited to expenses incurred in earning an assessable income. So it is not a special provision but a general provision in the taxation agreement.

When one talks about home ownership and the fact that houses are much more expensive today than they have been, one ought to have a look at some of the underlying reasons. We have the lowest interest rates in 30 years and we have a strong economy. The household mortgage rates of 6.8 per cent are the lowest for 30 years, so it is no wonder that people are encouraged to buy their own homes. We need to remind this chamber constantly that under Labor these rates peaked at 17 per cent. Houses were unaffordable when interest rates on a new home were 17 per cent. Australians are now saving over $7,000 a year in interest payments on an average new home loan of $190,000 compared to what they would have been paying under those interest rates.

This government’s aim to provide Australia with a stable and a strong economy has forced house prices up because all the strengths of the Australian economy have enabled people to put more of their income into investing in homes. We need to remember that, since 1996, this government has
created over 1.2 million new jobs, which have enabled more people to purchase new homes. With new buyers in the marketplace, it is no wonder under our free market system that the price of housing has increased.

Let us not hear about the issue of housing affordability being the fault of the federal government and that they are the only ones who should fix it. How about the states playing their role? How about requesting the states to look at what they collect in revenue and stamp duty? As well as looking at the price of housing going up, we should look at the effect that stamp duty has had on being able to save a deposit for a home and being able to afford to buy it. Just to give you an example, when Premier Carr was elected in New South Wales the stamp duty payable on an average priced home was $5,420. What is being paid today for an average home bought in New South Wales? The average stamp duty paid on a median house price in Sydney today is $16,415. It is not just the federal government that have impacted on housing affordability. How about a call to the states to reduce the amount of stamp duty that they collect, which has been a windfall for the states in the income that they get in their budgets.

In Victoria, when Premier Bracks was elected in September 1999, just four years ago, the average stamp duty collected on a median house was $3,780. Today it has more than doubled. The stamp duty collected on a median house in Melbourne today is $17,200. So, when you talk about a crisis in home affordability, do not just accuse the federal government of the things that it has done in relation to housing affordability. How about getting the states to become more responsible by making sure they give some concessions on stamp duty to try to ease the pressure that is on new home buyers?

In his urgency motion, Senator Bartlett talked about the crisis in housing affordability. We need to remind him that, as a result of work done since the September quarter, as he would know, there has been a sudden drop in the last month in the prices of units and houses. It has slowed considerably for the December quarter in Sydney and Melbourne. We can expect that trend to continue. The cycle that we have had of house prices rising and then falling is likely to be just one of the normal cycles that has occurred throughout the history of our nation. The crisis that Senator Bartlett talks about is already starting to abate.

Senator JACINTA COLLINS (Victoria) (4.11 p.m.)—The Labor Party supports this urgency motion, and I want to stress a number of issues in relation to the crisis in housing affordability in Australia. Listening to Senator Ferguson, one might easily assume that there is no crisis and that the only time there were issues with housing affordability was many years ago when interest rates were high. But he needs to listen to himself when he refers to the slowing down that has occurred in the last month or so in the housing market. And what has been the cause of that slowing down? This government’s policy to support increased interest rates again. You cannot have it one way and not the other.

Labor has long recognised the growing problem of housing affordability in Australia and has been calling on the federal government to do a number of things. The first is to adopt Labor’s plans, including proposals such as matched savings accounts to help low-income earners to save. What Senator Coonan, for instance, did not do in question time today was to acknowledge the significant problems accepted by the Reserve Bank for low-income households and for new entrants into the housing market. Senator Coonan seemed to have no conception that the fine end of the crisis was first home buy-
ers. She spoke about growing wealth for home owners. That does not help the growing proportion of Australians who once reasonably aspired to own their own house but for whom it is now an unreasonable dream— a very distant dream for many young households in Australia today.

The second point in Labor’s plan is to adequately fund the Commonwealth-State Housing Agreement. I listened to Senator Ferguson ask, ‘What about the role of the states?’ I did not hear Senator Bartlett say that the states have no responsibility in this area. What we need—and I agree with Senator Bartlett—is a national housing strategy. The longer we sit here and shift blame from one level to another—back and forth, back and forth—the longer this government avoids establishing a strategy that can deal with these problems. Part of that strategy is a reasonable plan for investment in this area—an area that the Commonwealth shies away from, refusing to adequately fund the Commonwealth-State Housing Agreement.

The next point in Labor’s plan is that we should appoint a minister for housing with a clear brief to tackle the problem of housing affordability—again, stressing the problems now faced by Australian first home buyers—and then, finally, develop a national housing strategy. This is the critical part that the Democrats are highlighting today, and it seems to be beyond the government’s capabilities. Despite warnings about the housing sector from the Reserve Bank, the Secretary to the Treasury and a range of academic experts and community groups, the Howard government continues to deny the existence of the crisis in housing affordability. Senator Ferguson’s speech was yet another example of that denial.

Housing affordability is a complex and multilevel problem; we accept that. Affordability impacts on different people in different parts of Australian society in different ways. Ongoing cuts to the Commonwealth-State Housing Agreement by the Howard government have led to a rundown in the stock of public housing and to a severe shortage of housing for low-income earners, who might previously have relied on the public and community sectors to put a roof over the heads of their families. There is serious growth in homelessness, youth homelessness and the number of children living in homeless families, which this government is failing to address. For many other Australians on low incomes, the dream of home ownership is beyond their reach, and they have to find the money each week to pay high private sector rents. Even those with the means to enter the housing market are finding the going very tough. The proportion of first home buyers entering the market continues to fall month after month.

The problems in the housing sector have been growing for a number of years and have now reached such dimensions that even the Howard government cannot afford to deny their existence—although denial was very evident here a moment ago. Instead of listening to the experts and taking action, the government has taken the easy way out and has set up an inquiry. This reminds me of the inquiry into issues of early childhood—an agenda is established, but the agenda has no substance, no framework and no strategy. This seems to be the path that the government is taking in relation to housing and homelessness. The Productivity Commission may well, and almost certainly will, produce a worthwhile and useful report, but there is no need for the government to wait for that report before taking action along the lines set out by shadow Treasurer, Mark Latham, and shadow housing minister, Gavan O’Connor.

Only last week the Commonwealth Bank and the Housing Industry Association put out their quarterly review of housing afforda-
bility for the September quarter. This review contained some alarming information. Housing affordability is now 22.5 per cent lower than it was 12 months ago. The average monthly mortgage repayment for the first home buyer went up by $160 during the September quarter. In September 2001, the average first home buyer had to find $1,070 every month to pay the mortgage. By September 2003, this figure had risen to a whopping $1,740 per month. The income needed by a first home buyer to qualify for a housing loan from the Commonwealth Bank for the average house has risen from $42,800 in September 2001 to almost $70,000 in September 2003.

No wonder the Commonwealth Bank and the Housing Industry Association said, in a press release accompanying the release of the report on 27 November this year:

Housing affordability for first home buyers fell to a record low for the second quarter running …
The research by the Commonwealth Bank and the Housing Industry Association pre-dated the latest increase in interest rates. With higher interest rates, the difficulties faced by those struggling to get into the housing market must get even worse. Under the Howard government further interest rate rises are expected. Even the OECD, in its economic outlook for Australia released last week, predicted that there are more interest rate rises to come. It is not only those seeking to enter the housing market who are struggling. Many low-income earners are having difficulty finding the money to pay the rent each week. Senator McLucas will be following on this issue in more detail.

A national housing strategy is absolutely necessary if we are to tackle the problem of housing affordability in Australia. There are fundamental demographic, social and economic changes taking place in Australian society that dictate the necessity of a national housing strategy; for example, the demographic move of Australians to coastal areas, the changing structure of Australian families, and the widening income gap and increasing incidence of poverty amongst Australians. Elements of a national housing strategy might include the right government framework, including a federal minister for housing and a federal department of housing with the expertise to develop and drive a national strategy; a range of measures to assist low-income earners to build an asset base and to increase their chances of entering the housing market—these might include adopting Labor’s plan for a matched savings account; and reforming and revitalising the Commonwealth-State Housing Agreement to provide a boost for public and community sector housing.

All of these strategy components are critical, but many more issues might be addressed. This motion raises a broad scale of issues that could be considered as part of the strategy, but the critical issue is that it is action that is required now. We can no longer do as Senator Ferguson did today: just sheet blame around various levels of government and around issues such as interest rates, the impact of the GST on the housing sector and how other schemes are operating. I was intrigued to hear a government member—I think it was Senator Coonan—say today, in relation to the first home buyers scheme, that states were being inconsistent or hypocritical in now proposing that it be modified to ensure that high-wealth families are not the ones benefiting from it. Again, we can stand here today, as in the past, and sheet blame one level of government across another and one party across another, but until this government comes forward with a national strategy—a national plan to work with the states and with other parties involved in the housing sector—we cannot seriously believe that it is doing anything to address the problems in this sector.
The Howard government seems to think that macroeconomic policy and a focus on low interest rates are the only solutions to our housing industry problems and to affordability issues. Obviously, this is not the case. This government has had many years now to pursue that strategy and, clearly, the outcomes are demonstrating that it is not having success. We need a strategy focusing specifically on the problems in the housing industry. We need this strategy because, as I have said earlier, there are critical problems for first home buyers. At this point in time, they simply cannot enter the market. The Australian dream of owning your own home, which John Howard would claim to hold to, is becoming an illusion. Until the government faces up to that—and until the community understands the consequences of it—the problem will only get worse.

When the problem gets worse, there will be an impact on our community, on our society, of things such as homelessness. Homelessness is on the rise. We often hear of the number of children living in households where no-one is working, and that is one problem. But now the problem we face is the growing number of children living in households where there is no home. I referred earlier to the rhetoric from this government about having a national agenda. It may claim to have a national agenda in this area, but there is no strategy and there is no action. That is clearly what is called for here. Hopefully, a strategy—as proposed in this motion by the Democrats—will ultimately bring the government to some clear action to deal with housing affordability.

I have just now highlighted a number of the issues that could be addressed in that strategy. I have indicated that Labor can support this motion. I have also highlighted some of the problems that are now occurring. Let me conclude by stressing a couple of those problems again. The Commonwealth Bank, the Housing Industry Association and the Reserve Bank are all telling us that things are getting to the critical stage and that we are at an all-time low on some very key indicators in this area. The Australian Bureau of Statistics housing finance figures reveal that during September the proportion of first home buyers hit 13.3 per cent of all dwellings financed. This is the lowest figure ever recorded. Historically in Australia the proportion of first home buyers has been around 23 per cent. Decade after decade this is what has sustained the great Australian dream of home ownership—that is, market entry—and this dream is now fading.

The Reserve Bank has reported that Australia now has its greatest ever debt-servicing ratio for home loans—6½ per cent of household disposable income is absorbed by the repayment of mortgage interest. It is now tougher for people to service a loan to buy a home than at any time in Australia’s history. So, despite the low interest rates and the macroeconomic progress that this government claims would benefit all Australians, we know that in housing this is simply not the case. Key indicators show that things are getting very bad—in fact, the worst in Australian history—and it is time for clear action by the government and a clear and comprehensive strategy.

Senator McGauran (Victoria) (4.25 p.m.)—We are discussing an urgency motion brought forward by the Leader of the Democrats, Senator Bartlett, calling for a national strategy to address the so-called housing affordability crisis. You have to feel sorry for the previous speaker who presented the opposition’s case—and she is leaving the chamber—

Senator Jacinta Collins—No, I am not.
Senator McGauran—Not quite; she is willing to hear what I have to say.
Senator Abetz—Bad luck!
Senator McGauran—It is a bit of bad luck, as my colleague says. You have to feel a bit sorry for the previous speaker, Senator Jacinta Collins, because tomorrow the opposition are jammed between two potential leaders who, in their own way, would make housing affordability more difficult. One has a record—and one potentially has a record—of putting housing affordability way out of the reach of the average Australian. Mr Beazley was part of a government that, as a blunt monetary policy, ratcheted up interest rates to the point where housing loan rates were 17 per cent. That put housing affordability beyond reach. It was an all-time Australian record. If that is not your choice and you want to go with the other potential leader, Mr Latham, I remind you that he is the shadow Treasurer who suggested the return of capital gains tax on homes. What would be more devastating to the new home buyer, the existing home buyer and the mortgagee than the reintroduction of capital gains tax?

What credibility does Senator Jacinta Collins have in presenting the case for the opposition at all? She spoke of low-income renters having difficulty meeting their rents. I can tell Senator Jacinta Collins that there is a welfare safety net in place. But bar that, there is the underlying suggestion by the shadow Treasurer and the left of the party—and in fact they did it once when in government—to abolish negative gearing. Abolishing negative gearing would be the surest way to send those low-income renters onto the streets or further down the scale. They say we should just abolish negative gearing. We have seen the results of the abolition of negative gearing. In Sydney, the rents skyrocketed. It had such an effect on the low-income earners and the affordability of houses that the policy was reintroduced.

Incredibly, I find myself defending the government’s policy of simply not entertain-

What the Democrats should be doing is not attacking the government but attacking the states. We never heard Senator Collins once mention the odious stamp duty, the milking by the states of the stamp duty on houses. We never heard mention that tomorrow the Reserve Bank meets with regard to interest rates, one month since it lifted the interest rates 0.25 per cent—on Melbourne Cup Day no less. It is now one month on and there is a suggestion that the Reserve Bank again is going to lift interest rates. Rather than attack the government and use this as a political rave, why doesn’t Senator Bartlett come in here and put forward his view on the Reserve Bank lifting interest rates? Interest rates have a major effect on affordability and, as much as the other side try to, they cannot deny it. Low interest rates build confidence and stability into the economy. It gives the home buyer the confidence to take out a mortgage. If they know that the economy is being run with a steady pair of hands and that interest rates are not going to be ratcheted up like in the old days, it gives them the confidence to borrow and it meets their aspirations.

Senator Bartlett and those from the opposition should be turning their attention to the decision of the Reserve Bank. You are entitled to have an opinion on that. It is an inde-
pendent body, it has its own charter and it has its own reasons for making a decision. But we in here can still hold an opinion on the decision of the Reserve Bank. I put forward my view on the previous decision of the Reserve Bank in the adjournment debate last week. Not only does it affect the mortgagees—the home owners—who have taken out a debt but also it affects the general economy and no less the rural economy. As the dollar rises, of course, our exports are affected. Why doesn’t Senator Bartlett come in here and, instead of attacking the government, form a view around the decision of the Reserve Bank on interest rates? Why doesn’t he come in here and attack the state governments? It is the greatest tax rip-off since 1993 when Paul Keating would not give the l-a-w tax cuts.

The stamp duties collected by the states—my state of Victoria being the absolute worst—are a rip-off. It is a percentage tax on the GST—it is a percentage on a percentage. On a home costing $250,000, there is over $10,600 paid in stamp duty. For a $150,000 home, there is $4,600 stamp duty. For a $500,000 home in Victoria, the stamp duty is $25,600. In New South Wales, for the equivalent $500,000 home, the stamp duty is $17,000. So you can see that the Victorian government are the worst. They utterly rely on it. There is no chance whatsoever of their abolishing that tax, for they would have their budget in deficit right now. They need the stamp duty to keep a facade of a modest surplus. It is an utter rip-off. When the Productivity Commission inquiry concludes, instigated by this government, into the affordability and availability of housing for families and individuals wishing to buy their first home, stamp duty will be found as the greatest impediment to affordability. But we heard nothing of that nature from the opposition.

Senator McLUCAS (Queensland) (4.33 p.m.)—The urgency motion that we are debating today, the need for the federal government to adopt a national housing strategy, is a position that Labor has held for a long time. The text of the urgency motion goes on to state:

… taking into account the concerns expressed by the Reserve Bank of Australia regarding the impact of negative gearing, instruments such as deposit bonds and the Federal tax system.

Whilst those elements are relevant in that they do impact on housing and the availability of housing in Australia, can I suggest to Senator Bartlett and the Democrats that a national housing strategy needs to address much more than that. Those issues do go to the purchase of housing and, as I said, are quite important, but a national housing strategy that a Labor government would implement would certainly be far more inclusive of the whole range of housing needs that we need to address within this nation. A national housing strategy under Labor would address housing affordability. It would address the state of the Commonwealth-State Housing Agreement, which has enormous effects on those who are in public housing. It would address issues around rent assistance. Can I suggest that, unlike this government, a Labor government’s national housing strategy would encapsulate a situation of cooperation between the state governments, local government and the Commonwealth so that collectively and cooperatively we can address some of the significant issues that we face regarding the housing requirements of the nation. A Labor national housing strategy would address the issue of homelessness, which I do not think the government recognises as a significant issue for our country.

The crisis in housing affordability today is no abstract notion to the 330,000 Australians in receipt of rent assistance who, under the Howard government’s own definition, are suffering housing stress. These Australians are spending more than 30 per cent of their...
weekly income, including rent assistance, on their rent. There is a shortage of public and community sector housing in Australia, forcing more and more Australians on low incomes to pay high private sector rents. In the Senate Community Affairs References Committee inquiry into poverty and financial hardship, housing was a significant issue. We were advised through ACOSS that, in a study by Yates and Wulff entitled W(h)ither low cost private rental housing, nationally there is estimated to be a shortage of 150,000 units of affordable housing.

ACOSS also advises some of the factors that are driving a reduction in housing affordability. ACOSS suggests that these include a continued decline in spending on social housing, decreasing levels of home ownership, increasing numbers of homeless people and changes in the nature of work. ACOSS also suggests that the targeting of public housing has often been inappropriate and that the Commonwealth rent assistance program—the CRA—does not ensure affordability for those who are renting in the private market. There is no concurrence from ACOSS about the effectiveness of the safety net which Senator McGauran so proudly talks about. I certainly concur that safety nets are not necessarily the way to go when you are designing any public policy—Medicare is a good example.

The root cause of the problem is the fact that the Howard government has ripped more than $1 billion a year out of the Commonwealth-State Housing Agreement. If you take $1 billion a year out of the Commonwealth-State Housing Agreement, how many houses is that? How many houses would the states not be able to afford to build for people on low incomes? How many houses would it amount to that cannot be built as replacement houses? We are seeing more and more that states are not able to provide the flexibility that the community requires in the public housing market.

In 1993-94 under the Labor government, the Commonwealth-State Housing Agreement stood at $2.8 billion. It now stands at only $1.3 billion, a decline of 54 per cent under this government. The government argues that it has increased rent assistance to offset that decrease to ease the burden on low-income renters, but we have heard already from ACOSS that they do not concur that the CRA is an effective measure. The fact is that, while funding for the Commonwealth-State Housing Agreement has fallen by 54 per cent, rent assistance has risen by just seven per cent. If you add the expenditure on rent assistance to the Commonwealth-State Housing Agreement, as of today the total has fallen from $4.6 billion 10 years ago to $3.2 billion this financial year.

UnitingCare, in their submission to the poverty inquiry, also talked about housing. They suggest that the provision of public housing has been eroded, leaving low-income families to struggle in the private rental market. Groups particularly disadvantaged in housing policies include prisoners, people with disabilities and Indigenous people. Earlier in their contribution to the inquiry they said that:

Affordable housing is most readily available in areas with low employment prospects and the least infrastructure, leading to other forms of poverty. Affordable housing needs to be located close to employment and services if it is to be of benefit.

That is the point I am making about the need for flexibility for the states in the purchase and dispersal of their housing stock, so that they can be flexible to meet the changing needs of their community.

One in 10 rent assistance recipients—around 85,000 of them—have to spend more than 50 per cent of their income on rent. This
puts them into extreme housing stress with a very high chance of moving into homelessness. We also received a submission from the Australian Federation of Homelessness Organisations. They said:

Homelessness is not a simple issue. There are many structural factors that contribute to homelessness, ranging from economic and social factors such as domestic and family violence to cultural, familial, and personal issues. Homelessness creates instability, leaves people unsafe and vulnerable to chronic unemployment and ill health, and with limited or no ability to participate in the social and economic life of their community.

In particular, AFHO suggested to us that people belonging to particular population groups can experience homelessness differently and they point to the reality that for women, homelessness is most often closely linked to domestic and family violence and for young people, homelessness is strongly linked to family abuse and violence, family conflict and unemployment.

A national housing policy is more than just simply addressing economic indicators and economic causes that affect home ownership. A national housing strategy has to deal with a broader set of issues than simply home ownership. I concur with Senator Jacinta Collins in her call for less blaming of the states in the issue of housing. The call from the government for the states to reduce stamp duty has been long and loud, but I have heard no mention from the government of the increased GST revenue that they are receiving through the cost of purchasing housing.

This is a time for cooperation, not blame. This is a time for us to work with state governments and local governments. The location of housing in relation to employment is significant and flexibility in housing location is required. I also commend urban renewal programs which many states have adopted in order to deliver a better quality housing stock to those people who are using public housing. I commend the urgency motion. I commend a national housing strategy and I encourage the government to join with—(Time expired)

Senator WATSON (Tasmania) (4.44 p.m.)—The question of the affordability and availability of housing is high on the Liberal-National Party agenda; so high in fact that the government has taken the initiative of directing the Productivity Commission to inquire into and report on this particular issue. There are many factors associated with affordability, and one of the principal factors is interest rates. Interest rates are the lowest they have been for about 35 years. Do I need to remind opposition senators that under the Labor Party and Paul Keating interest rates peaked at 17 per cent in 1990, causing great distress to many families? So what do we have now? Australians are saving $3,950 per annum on a $100,000 loan and $7,000 on a $190,000 home loan. But what is more important is that we now also have a strong and stable economy, incomes remain strong and almost 1.3 million jobs have been created since the government came to office. I remind honourable senators opposite that potential home purchasers resist purchasing a home when their job is insecure or when there are doubts about the economy. If you look at the latest available indicators on confidence, you will see that they are currently at a very high level.

I also remind the Senate that since the Howard government came to power, household wealth has increased by $1.6 trillion, or 90 per cent—and everybody knows that a large part of this can be attributed to the housing sector. In fact, the Liberal-National coalition has been especially kind to home owners. For example, the principal place of residence, as we know, is exempt from capital gains tax. The government also introduced the First Home Owners Scheme,
which enabled people to obtain a deposit for a home. That has been a major factor in allowing thousands of young Australians to own their own home, and to date around $4.1 billion worth of grants has been distributed to over 520,000 families.

Do I need to remind the Senate that affordability varies from state to state, city to city and town to town? It is well known that in Sydney the two-income professional families have largely been responsible for pushing up certain house prices, particularly in the area of apartments. Then we come to the state responsibility—yes, states do have a role. For example, the GST does not apply to the purchase of established homes; therefore, as approximately 85 per cent of first home buyers buy established homes, the GST only applies to about 15 per cent of first home buyers.

The Liberal-National coalition government has also supported the concept of negative gearing. I am surprised about the Reserve Bank querying this. The Labor Party at one stage, as we all know, discontinued negative gearing; but they restored it pretty quickly because of the detrimental effect on the ability of lower-income families to find reasonably priced rents. So when you look at housing affordability, you have to consider people on lower incomes who cannot afford housing at any time and what the impact on rents will be. Yes, housing prices have been on the rise; but what we have been seeing in recent years, in a sense, is a correction in certain areas—certainly in my state—of fairly stagnant prices. There are some areas where house prices actually went back during those stagnant times; again, I am thinking of Tasmania.

Dare I mention that in the past couples have saved for years for a deposit to buy a home? They aimed at a modest three-bedroom home in a cheaper suburb just to break the rental roundabout. Perhaps expectations need to be adjusted to cope with the new economic conditions. We like to think of home ownership as a right, but in a sense it has to be earned through hard work, thrift, compromise and help from the government. I believe the coalition recognises the need and aspirations of young people to buy and to own their own home; you only have to look at the conditions we set for the First Home Owners Scheme. Having said that, there is growing evidence that growth may have slowed in some quarters, particularly in Sydney and Melbourne—certainly in the area of apartments.

A factor that is also contributing to housing affordability is the decision of the Reserve Bank to raise interest rates. I must say that I was a little bit perplexed by the bank’s decision to raise the rate last time. The main charter focus of the Reserve Bank is not on one particular asset class such as housing but on maintaining a control over inflation, yet inflation has been within the Reserve Bank targets. So we are really mystified about the need for a rise and the particular interest the Reserve Bank has taken in deflating the housing market.

Then we have the Australian Prudential Regulation Authority, which has conducted its own rigorous stress test, as it has called it, to help it gauge the resilience of authorised deposit-taking institutions in housing loan portfolios in the event of a substantial housing correction. After conducting such stress testing, APRA found:

... the results are reassuring. They demonstrate that the ADI sector—even though heavily exposed to Australia’s very buoyant housing market at present—remains well capitalised and could withstand a substantial housing market correction, if one were to eventuate, without putting depositors at undue risk.

So it seems that the Reserve Bank has acted to slow or deflate the housing bubble with a
very crude mechanism: interest rate movements. In so doing, it is going to cause enormous damage to other sectors of the economy, particularly exporting. (Time expired)

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.51 p.m.)—I rise to speak at the closing of this debate, to which there have been some useful contributions. The main problem is still a lack of recognition by government senators that this is a matter of urgency. The main message from a lot of government speakers seems to be, quite astonishingly, that housing affordability is not really a problem. There is a failure or a refusal on the part of the government to listen on this issue. There have been groups saying this for well over a year—not just community groups; the housing industry groups themselves have been looking for ways to address the growing problem of housing affordability. Now we have the Reserve Bank itself highlighting this. The government cannot continue to ignore this issue and indeed ignore the facts.

Senator McGauran and Senator Ferguson said that abolishing negative gearing caused rents to rise. The fact, as opposed to the myth, is that, when negative gearing was reformed—and it was quarantined, not abolished, in 1985 under the Labor government—the rental markets in Perth and Sydney certainly dried up and rents increased dramatically, but these cities had very low rental vacancy rates prior to that time. In other cities, rents increased only in line with inflation. There is no evidence that this action caused rents to rise across the board, as people keep saying. Secondly, apparently it is an appalling thing when rents rise by a massive amount in a short period of time but not a terrible thing when the price of housing itself rises by similar amounts across the board across the nation, in city and country, in such a short period of time. The suggestion that low-income renters have access to a safety net, as Senator McGauran suggested, is simply not borne out by the facts. The safety net has clearly failed.

I notice that Senator McLucas said the Democrats’s call for a strategy was too narrow and confined to tax. Quite frankly, it is not just a matter of tax—and I have never said that it was. Indeed, this matter of urgency mentions the issue of deposit bonds, among other things. We need a broad housing strategy that encompasses all aspects of housing, including tax, but we have to acknowledge, particularly at federal level, that taxation incentives are an important part of the mix—and the Labor Party cannot run away from looking at the taxation settings, such as capital gains tax and negative gearing.

We saw Mr Latham briefly, for an hour or two, seek to raise that and get slapped back into his box some months ago. Perhaps, with the changes that are occurring, we might see Labor once again acknowledging at national level that there is a responsibility to look at taxation settings—not alone; certainly in conjunction with other measures. They cannot be ignored and simply swept to one side. The Reserve Bank, no less, has clearly stated that that is a fact. This is an urgent matter. It is a disappointment the government still refuses to acknowledge that, but I think that the continuing speaking-out, including by the Reserve Bank, shows that it is—(Time expired)

Question agreed to.

DOCUMENTS

Auditor-General’s Reports

Report No. 14 of 2003-04

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 14

Auditor-General’s Reports
Report No. 15 of 2003-04

The ACTING DEPUTY PRESIDENT—

Senator MURRAY (Western Australia) (4.56 p.m.)—I move:

That the Senate take note of the document.

I will not detain the Senate for long, but I do want to draw attention to a number of matters concerning this audit report. The first point is that it should be recognised that this is the first audit report of the staff of members of parliament in 100 years. The second point is that this audit report is a result of the Democrats and the Labor Party asking that such an audit be undertaken. The third point is that the report itself has had a long gestation and was a continuation, in theme at least, of the report into parliamentarians’ entitlements, Audit report No. 5, which was entitled Parliamentarians’ entitlements: 1999-2000 and came out in August 2001. The two must be seen as concurrent. The consequence of its long gestation has meant that the matters it was designed to address have to some extent been addressed by Department of Finance and Administration in the intervening period.

No-one should misunderstand the new environment under which both parliamentarians’ entitlements and staff entitlements are dealt with. The Department of Finance and Administration has markedly improved the nature of management reports. The quality of internal audit and reference and the ability of the department to rationalise and improve the way in which these matters are administered have been quite significant. In amongst this process, we should also recognise the contribution made by the Senate estimates processes, by the Senate Standing Committee on Finance and Public Administration, which has responsibility in this area, and by Senator Faulkner, whom I mentioned earlier as having supported this process of audit. I also add the name of Senator Robert Ray, because, between the two of them, they have put a great deal of focus on this over time.

In some ways this report does not tell the committee anything we did not already know; namely, that the times which you really have to be on your toes to ensure that entitlements are within entitlement are at election times and with respect to specific areas of discretion—namely, those of overtime, travel and travel allowance. It is quite clear from the report that there has already been a tightening and that excesses are less than they were. Nevertheless, the Auditor-General has come up with 13 recommendations, to which Finance and Administration has agreed to 12 and agreed to only one with qualification. I must say that the Finance and Administration response is far better on paper that it ever was to Audit report No. 5, where they sought to quarrel with the Auditor-General’s response but, in the end, recognised the sense of what it had said and moved to meet its requirements.

The consequence of this report will be that the election in 2004 will be less open to, shall we say, taking licence with respect to the entitlement provisions of staff than were previous elections. I am confident that the minister responsible and the department will be aware that the scrutiny opportunity provided by this report will mean that they will have to be far more particular about what people do and when they can do it.
One area that the report does spend quite some time on is the certification process by parliamentarians. As always, it is quite apparent that the vast majority of parliamentarians, both current and former, have been certifying and managing their management accounts and management reports to the best of their ability and with attention to their responsibilities and duty. But it is quite apparent, reading the subtext of this, that there is a minority who are still not doing the right thing: who are still not certifying documents correctly and who are still not policing their staff and staff behaviour sufficiently.

A note is made in the report—and I have not been able to read the whole report in the time I have had it—that there is no legal requirement as yet for parliamentarians to certify the documentation in the manner required by Finance and Administration. In other words, it is regarded as a moral duty but not a legal duty, and there is not so much a suggestion as a remark that, unless it is enshrined in legislation, you will always have difficulties with a minority. It may be, if the position does not improve, that at some stage the question of certification of accounts and of authorisations might need some legal trappings through the appropriate finance regulation or legislation. I am not convinced that that is necessary right now. I would prefer to see the process of estimates and the process of audit try and get compliance first before we go to that step.

The area that still should hold our attention is the way in which, it seems to me, staff and their managers—namely, the members of parliament and the senators—seek to supplement a somewhat lowly salary for some through the device of overtime. I am not convinced that in some cases overtime is anything more than a device to improve an otherwise low salary situation. But of course I cannot do anything else but make that a suspicion, because I certainly do not know whether that is the case.

The Auditor-General’s approach means that this sort of audit should be a periodic one—say, perhaps once every two election cycles or so—until we are sure that the process for both members of parliament entitlements and for members of parliament staff and ministerial staff entitlements reach the high standards they should be at. I will emphasise yet again that, since I came into this parliament in 1996, the standard and quality of management, administration and oversight has vastly improved. One thing that does come home, of course, is the cost of accountability. This Senate is a house of accountability as well as of review, and the cost of ensuring that full transparency and accountability is met is quite high. We may need in future to look at ways of lowering that cost.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (5.06 p.m.)—The opposition welcomes this report and the findings of the report. I would have to say that, with the very short amount of time available to me, I have had only the most cursory look at the report. I want to make some general comments in relation to the document. As well as welcoming the report, I welcome the fact that the Department of Finance and Administration have signed up to 12 recommendations and agreed, with qualification, on one other.

Ever since the travel report scandals of 1997 and 1998, the government has been slowly improving the administrative processes surrounding entitlements. Of course, the slow progress that has been made has been as a result of very considerable pressure from the opposition with support from other interested parliamentarians, of whom Senator Murray is the most prominent on these particular matters. Over the past five years, we have
seen the development of better checks on claims and a more streamlined system for reconciling payments. There is no doubt that these changes will have saved taxpayers millions of dollars.

The Labor Party has supported these changes, particularly the tabling of travel and travel allowance costs for parliamentarians. This is a particularly important thing: transparency of itself has had a major impact on preventing further travel rorts. Transparency prevents any temptation to dip too far into the taxpayers’ pockets, and the half-yearly tabling of travel costs has certainly proved its worth since it was introduced. There are now very few—next to no—examples of parliamentarians misusing funds, and that is to the benefit of all concerned.

I also want to address this issue of the findings of the Auditor General in 2001 when Mr Barrett released a thorough report on areas where parliamentary entitlements could be managed better, including printing and communication allowances. In relation to that report, it is true that the department and the minister had a very churlish response. In fact, the department, you might recall, disagreed with 25 out of the 28 recommendations of the report. But since then printing allowances have been capped at $125,000 per year, which the opposition believes is a very high level, and further administrative safeguards have been introduced.

In relation to parliamentary entitlements, the last area the Auditor-General needed to scrutinise was the entitlements for staff. I am pleased to say that Audit report No. 15 of 2003-04: Performance audit: administration of staff employed under the Members of Parliament (Staff) Act 1984 closes that gap. We now know that during 2002-03 the Department of Finance and Administration managed 38,149 overtime transactions, 31,789 domestic fares and 55,000 domestic car

transactions in relation to the MOP(S) Act. It is a huge number of transactions by any measure, and the system needs to be simple yet watertight. They are the sorts of principles that are very important here, and I think we can all be pleased that improvements have been made. With such a massive number of claims, close management processes are required to mitigate any chance of fraud or misappropriation. To be quite frank, although this report does not give the Department of Finance and Administration a completely clean bill of health, it does return a positive assessment.

There is a range of issues raised in this report that will require further scrutiny, and it is the intention of the opposition to raise those matters directly with the government in the forums available to us, including Senate estimates committees. This remains a very high priority for the opposition. It remains a very high priority for me to ensure that we have a high level of parliamentary scrutiny of these important areas. That level of scrutiny, with the transparency that I have talked about, certainly means that all parliamentarians—government, opposition and those on the crossbenches—remain more accountable to all Australians. That is also true of staff employed by members of parliament—staff employed under the Members of Parliament (Staff) Act. I think these are very important obligations and responsibilities we have. For my part, I look forward to a thorough reading and analysis of this audit report. It is an important one; it raises a range of serious issues that need to be progressed in this and other forums of the parliament. As far as the opposition is concerned, I give a commitment that we will do just that.

Question agreed to.
On behalf of the Joint Standing Committee on Electoral Matters, I present the report of the committee, entitled Territory representation: report of the inquiry into increasing the minimum representation for the Australian Capital Territory and the Northern Territory in the House of Representatives, together with the Hansard record of proceedings, minutes of proceedings and submissions received by the committee. I seek leave to move a motion in relation to the report.

Leave granted.

Senator MASON—On 9 July 2003, the Joint Standing Committee on Electoral Matters was requested to inquire into and report on the issue of increasing the guaranteed minimum representation in the House of Representatives for the Australian Capital Territory and the Northern Territory from one to two seats each. Under the Constitution, the parliament may legislate for representation of the territories in the Commonwealth parliament as it sees fit. For the House of Representatives, the parliament has legislated for the territories to have a guaranteed minimum of two members each, and the member for Solomon has introduced a private member’s bill directed to this end.

The formula used to determine entitlements to seats is strictly a matter of arithmetic, based on the populations of the states and Commonwealth territories. The formula produces electorates of different population sizes across Australia. The Northern Territory has benefited in the current parliament, having two seats with substantially fewer electors than the national average, being half the size of the ACT seats and having fewer than even the five constitutionally guaranteed Tasmanian seats. In a sense, increasing the Northern Territory’s minimum number of seats would entrench that benefit.

Various social and economic arguments were made for increasing the minimum guarantee for the territories, but the committee did not regard these as decisive. The committee does not consider that the existing formula for determining the territories’ entitlements should be departed from—that is, subject to the guaranteed minimum of one seat per territory, the ACT and Northern Territory should be entitled to representation in the House of Representatives in proportion to their share of the national population. However, the committee has unanimously recommended that the Electoral Commissioner’s 2003 determination in respect of the Northern Territory be set aside albeit with two different reasons for making this recommendation—in essence, because of a lack of clarity for determining the population estimates of the territories and the states. This lack of clarity was manifest in two ways: firstly, some committee members believe that the error margin in the population for the Northern Territory creates significant doubt as to the outcome of the 2003 determination. Those committee members consider that the figure at the top of the estimated population
range for the Northern Territory should be used as its estimated population figure rather than the middle figure in the range. This would result in the Territory retaining its second seat. Secondly, other committee members believe that it was the intention of the parliament that the population statistics used in the determination be the latest published statistics at the time of the determination. For the 2003 determination, the published statistics that should have been used were those of June 2002. Those figures would have entitled the Northern Territory to two House of Representatives seats.

In any event, the committee unanimously recommends that the 2003 determination be set aside to the extent that it applies to the Northern Territory. The AEC advised that the effect of such a setting aside would be to restore the Northern Territory to two divisions, as if the determination had not taken place. The committee as a whole has concerns about the future potential impact of the error margin in the population estimates for the territories in particular. Where the population shortfall from the number required to retain or gain a seat is within the margin of error in the population estimate, to not take the error margin into account means that the actual population may be denied a seat to which it is entitled or that the actual population may receive a seat to which it is not entitled. Accordingly, the committee recommends that the error margin should be taken into account for the ACT or the Northern Territory if the territory falls short of the quota for a seat in the House of Representatives and the shortfall is within the margin of error acknowledged by the Australian Bureau of Statistics. To facilitate this, the Australian Statistician should advise the Electoral Commissioner of the margin of error in the population estimates for the territories.

As to the determination process more generally, the committee considers that this should be more transparent and more certain. In the interests of transparency, the committee recommends that all of the estimates and calculations used by the AEC in its determination should be published. This includes all the statistics that the ABS supplies to the AEC, all adjustments that the AEC makes to the ABS statistics to take account of Australia’s external territories, and the calculation and outcome of the determination itself.

As well as being publicly available, the committee also considers that the statistics used in the determination should be certain in time. Accordingly, the committee recommends that, at the time the AEC is required to make a determination as to entitlements to seats in the House of Representatives, the AEC should use the latest population statistics that have been published by the ABS in Australian demographic statistics. This would remove any scope for the AEC to seek more recent figures than the latest published figures.

Just quickly, in view of the time, the committee thanks all those who made submissions and appeared at the public hearings. My thanks go to the committee chairman, Mr Georgiou, to the deputy chair, Mr Danby, to fellow committee members and, of course, to the committee secretariat. I commend the report to the parliament.

Senator ROBERT RAY (Victoria) (5.23 p.m.)—The number of seats that the House of Representatives obtains is basically double that of the Senate, is determined by the Constitution and refined by the Electoral Act. There were, of course, two major court cases in the 1970s that needed clarification by way of legislation so that the formula could be refined so that it would be safe in front of the High Court. For instance, if indeed a state had been misallocated a number of seats, an injunction could have been taken which, in turn, would have prevented an election in...
that state occurring for that number of seats, and a reallocation of seats to that state meant that that state would vote as an electorate at large, similar to what South Australia and Tasmania did in 1901. Because we have made no provisions in the Electoral Act as to how that election would occur, great uncertainty exists. We do not know whether it would be a proportional representation election; we do not know whether it would be winner take all—in fact, we have no idea whatsoever. We have, however, just in case an injunction is ever put in to us, made provision in the Electoral Act either to amalgamate two small electorates or to divide the largest electorate and so survive for that particular part of the electoral process.

There are no such constitutional restraints on territories. It became obvious during the mid-1980s that a government might flood the parliament with territorial seats. So, as a precautionary measure, we put within the Australian Electoral Act a provision for a formula for either an increase or a decrease in the number of seats. It was on a very similar basis to that which applies to states. It was very much a formula that we expected would always govern the allocation of seats. The term used at the time was, ‘Where the chips fall, they fall.’ Essentially, that has operated and taken us right through until this year.

We considered these matters in the Joint Select Committee on Electoral Reform, as it was called in 1985. Not surprisingly, it took until 1990 for the parliament to finally get around to incorporating these provisions for the House of Representatives members in the territories. As a consequence of that, the Australian Capital Territory went from two seats to three seats to two seats; the Northern Territory went from one seat to two seats to one seat. I do not think that the coalition members and senators regarded it as an important matter. But that is not to say that we should not share their concern and look at it.

But one thing in all of this consideration that the Labor Party do not want to see, nor do I think the coalition members want to see, is a cheap, retrospective fix put in for political expediency. In any event, no-one knows who would be aided by the Northern Territory retaining two seats at the next election. The so-called self-interest, as espoused by Professor Mackerras, is not obvious to me. He must be a much better predictor of elections than he has been in the past to be able to project into the future to see who will be advantaged. So, at least when the parliament determines this matter, it probably will not be on the basis of known self-interest.

There are probably four factors involved in our consideration here. Many of the submissions argued straight off that the Northern Territory should just have a minimum of two members from now and into eternity. The problem is that we do not regard that as being particularly democratic. We understand the certain limitations of Tasmanian representation that were part of the federal compact, that are irreversible, and we accept that as part of the compromise of Federation. But we do not necessarily want to repeat in the future by way of legislation any inequities that were previously entrenched in the Constitution. So the committee has unanimously rejected the concept that either the ACT or the Northern Territory should have a guaranteed minimum number of seats.

Then we come to what we might called the ‘frippery’ arguments—the ones that you put in to dress up a case of self-interest. They ran something like this: ‘Oh, the Northern Territory is a very large seat, so it can’t possibly have fewer than two seats.’ The fact
that Kalgoorlie is a lot larger seems to be overlooked. The second argument went like this: ‘There is the unique nature of the Northern Territory seat, with its large Aboriginal population.’ Previously, I have never heard an argument in this place get a majority view that you should have a separate seat for Aboriginals, so I do not think that had much weight.

The third argument was: ‘Look at their export performance.’ I did not know that we were about to hand out seats on the basis of export performance. When you look at the Grants Commission, of course, the old Northern Territorians are getting seven times that of Victoria in national grants. So we might actually have to cut their representation by seven times. I think they would argue with that. Finally, we got the almost cryptoracist argument that, somehow, Northern Territorians are superior, especially toCanberrans, that Canberrans were just low-life and that, for some reason, Northern Territorians deserve an extra seat because they are wonderful people. Of course they are wonderful people but, sorry, we are not going to give you an extra seat for that reason.

So we now get to the two substantive reasons to argue in favour of an extra seat for the Northern Territory this time around. One is that strong and absolutely unchallengeable evidence was given that the undercount in the Northern Territory is greater than anywhere else in Australia. Now I was a sceptic, I admit. I was a total sceptic going in, when I heard these arguments. I thought it would just be a self-serving argument, but we heard from the Bureau of Statistics, other witnesses and academic experts and at the end of that it was uncontestable that there is a major undercount in the Northern Territory. That in itself, in my view, is not good enough reason to restore a seat in the Northern Territory this time around—no-one had brought this up or challenged the situation in the previous 13 years. No-one raised it as an issue. No-one had the intelligence, the foresight, to bring this issue forward. But one question is absolutely clear: once having discovered that there is a major undercount there, why not legislate for the future? Why not put in the legislation something that recognises that and protects the right of the Northern Territory, given this statistical handicap that they have to operate under? That is precisely what this report recommends. For some members of the committee, that is enough to negate the determination that the Northern Territory should go from two seats to one, but, although I accept the legitimacy and the honesty of their argument, I do not accept it as a good enough reason.

However, I have to go to the second matter. When we legislated on this, there was nothing in the explanatory memorandum to explain what the latest statistics of the Commonwealth were. The only person who knows anything about this now happens to be me, because I chaired the committee in 1985 and have the corporate memory. We intended—even if it was not described in legislation—that the latest statistics of the Commonwealth be the latest published figures. I can remember talking to other members and saying, ‘Where the chips fall with this publication, that’s it. We know there’s a lag period, but at least we think it’ll survive in the High Court.’

That has not been reflected in the behaviour of the Bureau of Statistics and the Australian Electoral Commission—not that they are in any way minded to manipulate this particular system, nor have they behaved badly. They have probably behaved in the way they have because they wanted to get the very latest statistics, but it did come out in evidence that they were well aware of the consequences of the latest statistics. I still cannot understand why the Australian Electoral Commission did not adduce before the
committee all the information we eventually wormed out of them. I think their lack of leadership and of research ability reflects rather poorly on them. But eventually, thanks in part to Senator Crossin and other Territorian representatives, we got the full story.

We found that they asked for the September figures to be brought forward. They based their calculations on a special version and, amazingly, that special version came up saying the Northern Territory was 295 votes short of a second seat. If they had used the latest available published figures—the June quarter figures—the Northern Territory would have retained its two seats. So I think there is a very strong argument to say not only, as this recommendation does, that in future we should take the latest ordinary published figures, so there can be no manipulation, but also that we should rectify what is now a past inequity and restore to the Northern Territory its second seat. It is not without complications. I think we have to actually carry transitional provisions in legislation—redistribution—so we can get through this period.

Therefore the Tollner bill has now become surpassed. What is required now is for this parliament, through leadership in the government, to legislate on these matters. I am pretty certain we can guarantee full Labor Party support now for legislation that will, if you like, sign off for future reforms in this area so the problem will not arise again and rectify any past inequity. I want to assure the Senate that this is not about the retrospective fix. There are genuine reasons for operating in this particular way, otherwise I would not have signed the report and neither would a lot of my colleagues. We are totally satisfied that there is a case to answer here.

Senator SCULLION (Northern Territory) (5.33 p.m.)—I rise as a very happy Territorian, not only because I am a Territorian but because it is just tremendous to get the news that has delivered equity and justice to Territorians. I would like to take this opportunity to thank all the members of the Joint Standing Committee on Electoral Matters for the great work that they have done and for the huge efforts they have made on behalf, principally, of Territorians. In the interests of brevity, I will not give you a long history lesson about how Territorians feel about this matter. I take on board the somewhat of a lesson in history from Senator Ray. Much of his information has given me a much better understanding of what has happened in this place prior to my being here.

We have a very proud and strong history in the Northern Territory of fighting for equitable representation. We only have to go back to the thirties and ask any of the families around the Northern Territory—people like the Cavanaghs, who surprisingly will tell you that their grandfather liked politicians so much that he went to jail for it. There are not many places in Australia you would find where that would happen. That was actually part of the ‘no taxation without representation’ campaign in the thirties and people felt very strongly about that then, as they do today. I will not go through the detailed process, but I think it is very important to note that, really, this was not only about two seats for the Territory; this was effectively—certainly from my perspective—about losing the seat of Lingiari, of losing the capacity to represent those people outside the seat of Solomon. I know that Senator Ray will probably make some very factual and intelligent arguments to counter that and perhaps he will be quite correct, but perhaps from a Territory perspective that was what we were losing. It was not only the two seats, because it is necessarily very difficult—or more difficult—to represent areas outside Solomon.

In 1962, of course, during this process we actually gave Aboriginals the right to vote.
Suddenly, mystically, the Northern Territory had 30 per cent more people overnight. It was magic! They just appeared like that and, of course, we were very grateful for that. It does not take a rocket scientist to tell you that we did not suddenly magically increase; we just found a different way of measuring. Territorians were always there. Those Indigenous people were always there and always needed the vote, but until such time as they had a vote they were not actually counted. The situation since 1962 has not changed dramatically for Indigenous people in the Northern Territory, and I just wonder whether or not the capacity for leadership and representation has anything to do with that—whether there is any tie between not having a particularly great lot in the world, which can be measured in a whole range of ways, and leadership and representation in federal parliament. No doubt tomes in the future will look into that very interesting aspect of it and I suspect that they will find a tie there somewhere.

In February this year, the Australian Electoral Commission determined that we were going to fall short by 295 people, and that we were going to lose one of our seats in the House of Representatives. This was based on the 2001 census, as has been mentioned before, and was pretty surprising. The best they can come up with in the Northern Territory is this undercount of 1.2 per cent that the good Senator Ray has been mentioning. That is three times the statistical error of any other place in Australia. I am not surprised, and if anybody understands anything about Indigenous Australia they will not be surprised either. It is very difficult to measure, in the normal ways, the vagaries of Indigenous populations—their fluidity, how they move into family groups and the remoteness in which they live and operate.

Of course it is hard, but that does not mean we give up on it. It does not mean we say: ‘Oh, well, great wall, great fence, that’s okay; that’s all right—it is a bit hard, so we just say “Somewhere around 4,000. Divide it in the middle; it’s about there somewhere; plus or minus 295 doesn’t really make any difference.”’ My colleague Senator Crossin and I have certainly been questioning the processes that they used. While Senator Ray indicates that we should legislate to deal with the undercount of 1.2 per cent, the Australian Bureau of Statistics need to take responsibility for this. It is hard, but we need to try harder to ensure that we have statistics which appropriately cover Indigenous Australia.

Unfortunately, there is another aspect of the inquiry that needs to be raised. The report says:

The Committee does not regard as decisive the various social and economic issues that were raised in support of increasing the minimum guarantee.

I can understand why Senator Ray puts some arguments down as frippery—we talk about the size of the electorate of Kalgoorlie and some humorous aspects about export performance. You have to accept that those arguments seem to be on the periphery of the reality of the issues that we are dealing with. But again I stress in this place the uniqueness and the difference of the seat of Lingiari. I can accept those other issues as frippery, but the issue is that the electorate of Lingiari comprises almost 50 per cent Indigenous people. Again Senator Ray in a semidismissive way—or perhaps respectfully—says that when you are looking at the clear issues of the law you cannot take into consideration these sorts of aspects. While I accept that that is a point of view, it is one that I simply do not accept.

For Indigenous Northern Territory, going back to one seat will mean the people who will lack representation are going to be those people in the seat of Lingiari. There is an
urban centric approach to gain votes because that is the way you get in next time—and 50 per cent of Indigenous votes lie within this little area of the Northern Territory. It is a very small area and it is very easy to deliver outcomes that deliver votes. I am perhaps being a bit cynical about parliamentarians, but I assure you if the seat is in Lingiari, where almost 50 per cent of the people are Indigenous, those Indigenous people will get a much better deal. And there are very few places like that. The electorate of Kalgoorlie, if you want to make a percentage comparison, has only 13 per cent Indigenous people but has the next largest representation in Australia.

If we are genuinely moving down the road of symbolic reconciliation that we have been speaking about in this place, we need to accept that Lingiari should have a very special place in the psyche of Australia. There is certainly no doubt that this parliament has made a very good decision—and I commend the committee for making such a decision—to move in all haste to prepare some urgent legislation. I am not sure whether I heard Senator Mason correctly but I believe he said there is no need for legislation; that this would take place. If I am not correct then we clearly need to have some urgent legislation to reflect recommendation 3 of the report. We must continue—and I say this particularly as a Territorian—to support Dave Tollner’s private amendment to lock in two seats for the Northern Territory, because that is equitable and just. This is the place where we deal with justice and equity for the states and territories, and that is what our founding fathers would have wanted.

Senator Robert Ray—Madam Acting Deputy President, I seek leave for an extension of time of half an hour to allow Senator Brandis, Senator Crossin and Senator Murray to address this issue, which will still allow ten minutes for Senator Watson and Senator Bishop to address the recent visit to Sri Lanka and Bangladesh.

Leave granted.

Senator BRANDIS (Queensland) (5.42 p.m.)—I was a member of the committee that brought down this report on territory representation. It is very important to notice that this is a unanimous report. It is important in particular because, for the reasons Senator Ray has explained, this was a very sensitive issue. It is, I believe, the first time that this parliament has ever set aside a determination by the Australian Electoral Commissioner, made under the Commonwealth Electoral Act, as to the proportional representation between the states and the territories. What the committee recommends parliament do, and what has attracted the support not only of the government and the opposition but also of Senator Murray, the Australian Democrat member of the committee, is therefore a historic event.

It is very important that the Australian people be reassured—as Senator Ray has sought to reassure them, and as I as a government member of the committee also seek to reassure them—that in arriving at this unanimous view the committee strove in good conscience not to be diverted by special pleading, not to be diverted by any perception of partisan advantage. As Senator Ray has rightly said, given the electoral character of the Northern Territory in any event, it would be almost impossible to predict to whose electoral advantage the outcome of the committee’s report would be.

What the committee did find in its hearings was an important ambiguity in the law, and that is sought to be addressed by recommendation 1, which I wholeheartedly endorse. The ambiguity lies in the expression the ‘latest statistics of the Commonwealth’. The mechanism of the Commonwealth Electoral Act is this: section 46 of the act requires
the Australian Electoral Commissioner, at the appropriate time, to:
... ascertain the numbers of the people of the Commonwealth and of the several States and Territories in accordance with the latest statistics of the Commonwealth.

Then having made that determination the Australian Statistician is mandated by section 47, on the request of the Electoral Commissioner, to supply the Electoral Commissioner with:
... all such statistical information as he or she requires ...

So you have two different phrases used in the two controlling sections. Section 46 speaks of ‘the latest statistics of the Commonwealth’, whereas section 47 speaks of ‘all such statistical information’ as the Electoral Commissioner may require; and therein lies the first problem. The source of the phrase ‘the latest statistics of the Commonwealth’ is section 24 of the Constitution, which requires that the number of members to be chosen from the several states be chosen by reference to ‘the latest statistics of the Commonwealth’.

What the case of the Northern Territory redistribution reveals is that the lack of statutory definition of the phrase ‘the latest statistics of the Commonwealth’, combined with the inconsistent usage between section 46 and section 47 of the Commonwealth Electoral Act, means that the process is, at least theoretically, open to manipulation. I want to emphasise ‘theoretically’ because I do not think it was ever suggested that there had been any attempt in bad faith to manipulate the outcome of the determination for the Northern Territory. But in any event what happened was this: the practice, as the Australian Electoral Commissioner explained to the committee, is that the Australian Bureau of Statistics on a quarterly basis produces what it describes as estimate resident population, or ERP, figures. Those figures are then published in a serial publication by the ABS entitled Australian demographic statistics.

There was some ambiguity or some inconsistency in the evidence before our committee as to what happens when the Australian Electoral Commissioner calls for statistics from the ABS under section 47 of the Commonwealth Electoral Act. Initially, it was said that what were supplied were the ERP figures as published in Australian demographic statistics. After a degree of confusion, it should be said, what emerged was that on this occasion the ERP figures—that is, the estimate resident population figures—for the Northern Territory that were used were not the same as the latest figures published in Australian demographic statistics. What had happened, and Senator Ray explained this, was that the Australian Electoral Commission sought from the Australian Bureau of Statistics the September quarter 2002 figures and relied upon them at the relevant time—the relevant time for the determination being in the month of March 2003.

But, at that time, the most recent published estimate resident population figures for the Northern Territory were the June quarter 2002 figures. If the statistics that were relied upon had been the latest published statistics—that is, the June quarter 2002 figures most recently published in the ABS’s Australian demographic statistics—then the Northern Territory would not have lost the second seat. It would have been held to be entitled to two seats. But, because the Australian Electoral Commission or an officer of the Australian Electoral Commission sought to have, in advance of publication, a look at the September quarter figures for 2002, the determination based on those figures produced the result that the Northern Territory was 295 electors short of the second seat.
That is an anomalous position. It means that, as happened in this case, statistics other than the most recent published statistics, but nevertheless having the colour of official statistics, may be supplied informally to the Australian Electoral Commission and have the result of changing the outcome of a redistribution. That anomaly could not have been displayed in a more dramatic way than in the case of the Northern Territory last time, because it had the effect not of reducing representation of a state from 51 to 50 or from 38 to 37 but of reducing the representation of a territory from two to one. So, in this borderline case, there could not have been a more dramatic outcome for the people of the Northern Territory.

This is an important case for legislative reform. As I said before, the expression ‘the latest statistics of the Commonwealth’ has never had a statutory definition, even though the phrase goes back to section 24 of the Constitution. The closest it has ever had to any form of definition is in the judgment of Justice McTiernan and Justice Jacobs in McKinlay’s case in 1975, where their Honours speculated about what that phrase might mean. But even that judicial gloss does not provide any certain guidance. As the report says—and as Senator Ray has indicated—it was always the legislative intention of JSCEM and its predecessors that ‘the latest statistics of the Commonwealth’, where the phrase is used in the Electoral Act, must be treated as meaning the latest regular published statistics of the Commonwealth so that there cannot be the interposition of any more recent informally supplied series of statistics.

In closing, let me finish where I started. The Australian people are entitled to be reassured, and they may be reassured, that this process, which ought to be conducted with strictly mathematical neutrality, is being set aside by this parliament because a procedural error was made—not for any reason of special pleading, not to appease the population of the Northern Territory and not for any calculation of partisan advantage but because the committee did discover an error, made possible by an inconsistency or an ambiguity in the law, which the committee unanimously recommends that this parliament make haste to correct.

Senator MURRAY (Western Australia) (5.52 p.m.)—Democracy is about power sharing—the way in which power is shared between parliaments, within parliaments, between the parliament and the executive, and between geographical regions. Much academic theory and analysis has shown that, most often, decisions regarding the principles as to how power sharing will occur have resulted from a view of how one person would not be disadvantaged relative to somebody else. In other words, academic theory says that self-interest dictates that you have to ensure that there is as much fairness in the process as possible to ensure that you get a fair deal yourself. I am not so sure I agree 100 per cent with that theory, because I do believe there are parliamentarians and policy makers who are driven by higher ideals and a sense of what is right and what is fair. Nevertheless, the point to be made regarding the sharing of power is that you want to arrive at a situation where the principles that determine representation apply without fear or favour. The value of the unanimous recommendations of this committee is that the principle is to be applied without fear or favour.

The principle which the committee is laying down is not to prevent the territories—either the Northern Territory or the ACT—losing or gaining a seat at some future date; it prevents them losing or gaining a seat in improper or unfair circumstances. This principle has been more than adequately spelt out in this debate, particularly by Senator Ray and Senator Brandis. Senator Scullion should
listen to some guidance I will give as the representative on electoral matters for my party. I think Senator Scullion has to recognise that neither the Labor Party nor the Democrats will move to enshrine a minimum of two seats for the Northern Territory. That is the purpose of Mr Tollner’s bill—to enshrine two seats. As you know, there is already one seat enshrined for each of the two territories. What we will move to do is enshrine a fairer process that recognises some of the real inadequacies that have been exposed through this process.

I have been singularly impressed by the ability of senators and members on the committee to get to the nub of the problem in the face of what was not bureaucratic obfuscation or deliberate misinformation but a failure to understand the principles and practices that needed to guide our consideration. The previous speakers were quite right to have reflected favourably on the efforts of people like Senator Crossin, who ensured that the material that was necessary to come to a decision got dragged out of the Australian Electoral Commission and the Australian Bureau of Statistics.

I identified two very strong sceptics in this whole process: the self-confessed sceptic was Senator Robert Ray and the other one was Mr Mackerras. When Mr Mackerras reads the report, I hope he will come to the same view that the committee came to—that the special circumstances of the Northern Territory do not reside in its geographic or population size but in its people. It is the places those people live in and the way in which they live that affects the ability of the Bureau of Statistics to count them. Consequently, out of all the states and territories, the Northern Territory has the highest undercount in population terms. This materially affects the way in which population statistics can be, or should be, examined. It also materially affects the standard error of margin. The other attribute which came through was that a figure such as 295—the figure which affected Territory representation, falling as it did within the error of margin—needed to be put into perspective. I think the text of the report is particularly useful in drawing out those threads and those themes.

I talk to this report today for three purposes. The first is to say that, in terms of past history and current reality, the Democrats have absolutely no chance whatsoever of getting a hand on one of these seats. We have absolutely no self-interest whatsoever in this outcome. The second is to say that, even if we had self-interest, we would have examined this in terms of the principles of fairness and equality to which we subscribe. The third is to indicate that when this bill comes before the Senate, as the electoral matters spokesperson in the Democrats, will be supporting it because it is a conclusion that we think is right, despite its unprecedented nature in Australian constitutional and electoral history. I have not yet taken the final findings to my party room, but, since I know my colleagues, I have no hesitation in knowing how they will react to this. It remains to thank the committee chair, Mr Georgiou, who is a very dogged and determined chair. He is well able to dig into these matters in the most thorough manner, and he is to be commended for that. I also thank the secretariat. I am sure that the Territorians will be delighted with the outcome.

Senator CROSSIN (Northern Territory) (6.00 p.m.)—I rise this evening to provide some comments on the report, handed down today, of the Joint Standing Committee on Electoral Matters entitled Territory representation: report of the inquiry into increasing the minimum representation for the Australian Capital Territory and the Northern Territory in the House of Representatives. At the outset, I acknowledge the work of the committee and the committee secretariat in hand-
ing down the report and the recommendations contained within the report. I acknowledge Senator Murray’s contribution before he leaves the chamber. I think people like Senator Murray have been crucial in trying to help us find a way through this problem.

We were looking at the determination to remove one House of Representatives seat from the Northern Territory. People would be aware from previous speeches that, due to population statistics and calculations, the Northern Territory went from having one seat to having two seats in the House of Representatives only at the last election. I was rather puzzled to learn why in such a short space of time the Territory would have that seat taken from it. I want to pay tribute in this house to the work of Warren Snowdon and in particular Dan O’Neill, who is from Mr Snowdon’s office. They were quite diligent in trying to get to the nub of the matter, as Senator Murray said.

Some of us knew from the very beginning that something was not quite right about the way these calculations had been made. I agree with the committee, in that I do not support the view expressed in some of the submissions put to the committee that the Northern Territory should have two seats just because we are the Northern Territory, just because we are 1.3 million square kilometres and just because we have a large Indigenous population. There had to be a way through this to ensure that the rest of the country was satisfied that this could be recalculated and looked at again in a bipartisan and totally legal way.

Through the work we had done, working with the ANU and Dr John Taylor, it became obvious to us that there were major problems with the census count, and this has been acknowledged by the Australian Bureau of Statistics now for quite a number of years. It became obvious in 2001, certainly from evidence that I gathered as I travelled around the Territory in places like Galiwinku and Maningrida and from talking to Elliott McAdam, the Labor Party member for the Barkly region, that a number of people did not hand back their census form. It then became obvious, as a result, that there had been a significant undercount in the Northern Territory. Through the estimates process, I then asked the Australian Bureau of Statistics to provide me with the exact statistics it provided to the Electoral Commission in order to see on what basis the Electoral Commission had made the calculation.

Finally, after many months the Electoral Commission provided to me the letter that confirmed what I had thought—that is, that the latest published statistics were not given to the Electoral Commission. The letter also confirmed to me that a special version of the September quarter ERP figures had been cobbled together in a separate publication which the commission had used. I raised the point in my submission to the Electoral Commission—and I think the committee picked it up and has done much further exploratory work on it—that I did not believe the latest available statistics provided to the Electoral Commission were in fact a special version of the September statistics. At the time of the request for the statistics, 22 October, the latest available published statistics were the June 2003 figures and on the basis of those figures the Northern Territory should have retained its second seat.

I am very pleased to see that the committee has found a way of acknowledging that not only were the wrong statistics provided but, as Senator Brandis said, an error was made. But more than that, we have noticed that in all of the calculations the degree of error in the Northern Territory is three times the degree of error in the rest of the country. These recommendations will pick up that anomaly and hopefully, when statistics are

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provided in the future, consideration will be
given to the degree of error in the Northern
Territory. It should not be as great and it
should be pulled back more in line with the
rest of the country.

I was very disappointed that Senator Scullion did not provide a submission to the in-
quiry. I acknowledge that David Tollner, the
member for Solomon, did. It is disappointing
when there are only four federal representa-
tives from the Northern Territory in the fed-
eral parliament that Senator Scullion did not
provide a submission. Be that as it may, there
is now a recommendation that, as Senator
Brandis said, the federal government will
now need to legislate to set aside the 2003
determination by the Australian Electoral
Commission with respect to the Northern
Territory. Senator Scullion’s comments that it
might just happen now by osmosis, or what-
ever the process is, and it should go ahead
and happen are incorrect. It will not happen
now unless the government introduces legis-
lation so that it can happen.

There is a private member’s bill in the
House of Representatives—the Common-
wealth Electoral Amendment (Representa-
tion of Territories) Bill 2003—introduced by
David Tollner. As this committee is recom-
mending that the bill be set aside and the
government will need to respond to this re-
port and respond to these three recommenda-
tions, the government will now need to draft
legislation and bring it before the parliament.
We know that we will be looking at a federal
election this side of the next 15 to 20
months. That does not give us a lot of time to
consider this legislation and allow the parties
to preselect their candidates for the next fed-
eral election. I urge this government to re-
spond to this report as quickly as possible
and I ask the minister responsible for these
matters, Senator Eric Abetz, to ensure that a
bill comes before this parliament as quickly
as possible so that it can be voted on. Then
the process can get under way so that not
only will the Territory have two seats for the
next federal election but also there will be
candidates in place to ensure that democracy
prevails in the Northern Territory.

Senator Murray has indicated his support
for such a bill. I have no doubt that Warren
Snowdon and I will be ensuring that the La-
bor Party support such a bill based on the
recommendations in the report of the Joint
Standing Committee on Electoral Matters. It
is important that this government act as soon
as possible to put legislation in place to en-
sure that at least recommendation 3 of this
report is put in place as quickly as possible. I
believe the other recommendations can be
looked at in the course of the next many
months. There will need also to be changes
to the Electoral Act to ensure that those rec-
ommendations are picked up and we do not
have the same problem following the next
federal election. It is very important that rec-
ommendation 3 is responded to by this gov-
ernment as soon as possible and that the leg-
islation is drafted and introduced into this
parliament—so that that determination can
be set aside as quickly as possible and the
parties in the Northern Territory can go about
preselecting candidates.

This report shows a degree of ability and
bipartisan cooperation. It was a very difficult
problem to overcome. It was a matter of pin-
pointing where the problem was, to ensure
that there was a legal and valid reason to
reinstate the second seat to the Northern Ter-
ritory, although there is not a recommenda-
tion that this be done. The recommendation
is that the determination, which was based,
as Senator Brandis said, on an error, be set
aside. The work of the committee has been
very commendable in this instance. I ask this
government to act quickly on these recom-
nendations.

Question agreed to.
On behalf of the Joint Standing Committee on Treaties, I present the 56th report entitled Treaties tabled on 8 October 2003, together with the Hansard record and minutes of proceedings. I seek leave to move a motion in relation to the report and to incorporate my tabling statement in Hansard.

Leave granted.

Senator KIRK—I move:

That the Senate take note of the report.

The statement read as follows—

Report 56—Treaties tabled on 8 October 2003

- Economic and Commercial Cooperation—Kazakhstan
- ILO Convention No. 182—Elimination of Worst Forms of Child Labour

Report 56 contains the findings of the inquiry conducted by the Joint Standing Committee on Treaties into two proposed treaty actions tabled in the Parliament on 8 October 2003, relating to the matters identified in the title of the report.

The bilateral Agreement on Economic and Commercial Cooperation with Kazakhstan, once in force, will facilitate trade and economic cooperation between ourselves and Kazakhstan. The Agreement prescribes that each country grant the other Most Favoured Nation treatment with respect to duties, taxes or charges imposed in connection with the import or export of goods. It also provides a formal framework within which any future commercial dispute can be managed. The Committee understands that the text of the Agreement is similar to that of similar agreements between Australia and Estonia, Latvia and Lithuania.

This is the second time that this Agreement has come under the scrutiny of the Joint Standing Committee on Treaties. It was first reviewed by the Committee in 1997. During that review the Committee discovered, among other things, that Telstra had experienced severe difficulties in the operation of a joint venture in Kazakhstan, resulting in legal complications and financial losses, the details of which are set out in the Committee’s Eleventh Report. In light of those findings, The Committee considered that ratification of the proposed Agreement by Australia would demonstrate Australia’s endorsement of a standard of commercial relations which the Committee considered unacceptable, and therefore recommended against it.

The Government Response to the Committee’s Eleventh Report, which was tabled in 2001, reported that Telstra’s difficulties had been resolved and that a new National Interest Analysis would be prepared. It is this new Analysis—tabled in October this year—which has provided the basis of the Committee’s current review, the findings of which are contained in the report that I am tabling today.

In this recent review the Committee found recent trade levels with Kazakhstan to be disappointing. Nonetheless, the ongoing stability and economic growth in Kazakhstan are favourable in the re-evaluation of the proposed Agreement. The Committee also acknowledges the potential that Kazakhstan holds, as it is rich in resources and experiencing significant economic growth. The Agreement will help position Australian traders in the future. However, the Department of Foreign Affairs and Trade acknowledged that Kazakhstan is a risky environment and that commercial enterprises enter at their own risk.

Notwithstanding this, the Committee accepts the Department’s advice that Kazakhstan has made progress towards a favourable investment climate. While business opportunities are currently limited, the Committee also understands the Agreement will assist businesses seeking trade with Kazakhstan in the future.

While in the Eleventh Report the former Committee commented extensively on flaws in the consultation process, on this occasion the Committee was generally satisfied with the way in which the Department had engaged in consultation.

However, the Committee continues to doubt the tangible effects of entering into this treaty, and is not convinced that the economic and political situation in Kazakhstan can be predicted with any confidence, and therefore the benefits of the proposed Agreement may be difficult to define. The
Committee acknowledges that the Agreement is one of encouragement and is not an enforceable treaty. The Committee finds on balance that it is in the national interest to proceed with binding treaty action.

The International Labour Organisation Convention Number 182 concerning the elimination of the worst forms of child labour, is designed to ensure that ratifying ILO member states take immediate and effective measures to prohibit and eliminate the worst forms of child labour, as a matter of urgency. Ratifying states also commit to rehabilitate victims and prevent other children from becoming victims.

Convention Number 182 is one of the ILO’s eight Fundamental Conventions. It has been ratified at an exceptionally rapid rate, with 144 of the 177 ILO member states having ratified the Convention. This attests to its significance and to the level of global support for the elimination of the worst forms of child labour.

The Government has taken the unusual step to table the Convention in Parliament prior to all Australian jurisdictions having compliant legislation in place. It is hoped that the early tabling will speed up the ratification process.

All States and Territory governments support the Convention and have provided formal agreements to ratification, and expressed their commitment to achieve compliance where appropriate. The Committee is concerned lest the process of compliance ‘take some time to complete’, as occurred with ILO Convention Number 155 which took 12 years for formal agreement on ratification to be reached. However, in March this year at the Workplace Relations Ministers’ Council, Ministers renewed their commitment to ratify Convention 182 and agreed to do whatever they could to fast-track the process.

However, the Committee was concerned that the early tabling of the Convention has led to incomplete or inaccurate evidence being presented to it. In the course of preparing this report, the Committee discovered that more jurisdictions already have compliant legislation than was advised at the public hearing. The Committee therefore recommends that, under such circumstances, it is provided with updated evidence, as it becomes available, up until the Committee’s report is tabled.

The Committee supports ratification of ILO Convention Number 182, in recognition of the importance and wide support of the Convention and to demonstrate Australia’s abhorrence of the worst forms of child labour and its commitment to its eradication.

In conclusion, it is the view of the Committee that it is in the interest of Australia for the two treaties considered in Report 56 to be ratified, and the Committee has made its recommendations accordingly.

I commend the report to the Senate.

Question agreed to.

DELEGATION REPORTS
Parliamentary Delegation to Latvia and to the 109th Inter-parliamentary Union Assembly

Senator CHAPMAN (South Australia) (6.11 p.m.)—by leave—I present the report of the Australian parliamentary delegation to Latvia, which took place from 24 to 28 September 2003, and the 109th Inter-parliamentary Union Assembly, which took place in Geneva, Switzerland, from 30 September to 3 October 2003. I seek leave to move a motion in relation to the document.

Leave granted.

Senator CHAPMAN—I move:

That the Senate take note of the document.

I had the honour of leading these delegations. At the outset I wish to place on the public record the delegation’s thanks to the parliament of Latvia for the full and comprehensive program, its warm welcome and its generous hospitality. Latvia, Estonia and Lithuania make up the Baltic States. Latvia is situated on the Baltic Sea and has an eastern border with Russia. Since gaining independence and freedom from the former Soviet Union in 1991, Latvia has emerged as an energetic country with a stable and growing economy with considerable potential, but also with significant challenges.
Latvia experienced real economic difficulties immediately following independence. Half of the economy was lost and, as one parliamentarian commented, it was very much the ‘wild, wild east’ with significant crime and corruption. Yet it seems with real commitment and pride the Latvians have turned much of that around. The latest economic statistics attest to this turnaround. Latvia has the lowest inflation rate among Central and East European countries: in 2000 it was 1.8 per cent; in 2001, 2.5 per cent; and, in 2002, 1.9 per cent. Latvia has impressive gross domestic product growth rates: in 2000, 6.6 per cent; in 2001, 7.5 per cent; and, in 2002, 6.1 per cent. Latvia has sound investment ratings: A2 by Moody’s; BBB+ by Standard and Poor’s; and BBB by Fitch IBCA.

Latvia’s cabinet has announced that one of its main economic priorities is to improve the investment climate. Accordingly, the government has continued to implement a progressive tax-reduction policy. Corporate income tax, which was set at 25 per cent, was reduced to 19 per cent in 2003 and will be further reduced to 15 per cent in 2004. Investments of over 10 million lats—the Latvian currency—may receive a tax reduction of up to 40 per cent from the total amount invested. Companies producing high-tech products in Latvia may obtain a corporate tax rebate of 30 per cent. The government of Latvia has also announced initiatives to build up the knowledge based economy by developing traditional sectors of the national economy on a modern technological basis. The government also plans to develop new knowledge based industries such as information technologies, biotechnologies and pharmaceuticals.

Many of the good things happening in Latvia were reflected in the delegation’s visit to Ventspils, a city on the Baltic Sea about 200 kilometres from the capital, Riga. Ventspils has a population of 44,000 and is Latvia’s, and North-Eastern Europe’s, most important Baltic Sea port. Following independence in 1991, the last decade has seen the rapid and unprecedented revival of this historical and significant crossroad between the East and the West. It has been a decade of rebirth and renewal. Ventspils has become one of the cleanest, safest and best-kept urban centres in Latvia. Ventspils has undergone sweeping environmental clean-up programs, transforming itself from what was described as an ecological disaster area to a well-kept and environment conscious city.

The delegation was pleased to visit the free port of Ventspils, which plays a crucial role in the economic and commercial life of Latvia. It is a transit centre for crude oil, oil products, potash, ammonia and other liquid chemicals, metals, ferroalloys and timber. The ice-free port of Ventspils had a transit cargo turnover of 28.7 million tonnes in 2002 and the traffic capacity of the port is more than 80 million tonnes.

The delegation was also taken on a tour of Ventspils Nafta, the leading company for the transhipment of oil and oil products in the Baltic Sea region; the Ventspils Olympic Centre, which is one of the most modern sport complexes in the Baltic region; and the Ventspils Museum, a modern high-tech museum housed in an impressively restored 13th century castle of the Livonian Order. These visits left the delegation in no doubt that the future for Latvia is very positive.

On the weekend before the delegation arrived, Latvians made a significant decision on their future by voting to join the European Union. Sixty-seven per cent of Latvians voted to join the EU in 2004 and a number of parliamentarians, including the deputy speaker of the Latvian parliament, emphasised to the delegation that joining the EU was not only about economic and financial
matters but also about Latvia’s vision for the future based on the values of liberty, freedom, human rights and dignity.

As I said, there are many challenges facing Latvia, and certainly one of those is extending and strengthening relations with Russia. Latvia’s relationship with Russia is an important but sensitive one. Another significant challenge is the integration of ethnic Russians in Latvia, who are the most significant minority group there.

It is unusual for delegations to include recommendations in their reports. However, in this case the delegation to Latvia considers that its successful visit can be enhanced and built on. Accordingly, the delegation considers that Australia-Latvia parliamentary relations can be enhanced and recommends that the Australian interparliamentary group supports the formation of an Australia-Latvia friendship group. The delegation also recommends that the Department of Foreign Affairs and Trade, in particular Austrade, assess the possibilities of stimulating more investment and trade between Australia and Latvia. The delegation also recommends that the Department of Foreign Affairs and Trade, in particular Austrade, assess the possibilities of stimulating more investment and trade between Australia and Latvia. The delegation also recommends that Australian agencies provide information to Latvian authorities on Australia’s immigration policy, practices and experiences as well as migrant flows and combating people-smuggling. The delegation recommends that Australian chambers of commerce should be encouraged to liaise with the Latvian Chamber of Commerce and Industry with a view to identifying opportunities for developing the bilateral trading and commercial relationship between Australia and Latvia, including through visits by business delegations.

The Latvian community in Australia, essentially refugees from the Soviet occupation from the end of World War II, are relatively small in number but have made a significant contribution to Australia’s development. It is noteworthy that some of their children or grandchildren who were born in Australia have now returned to Latvia to further its growth and development as a democratic and free economy. Reinforcing the link with Australia, it was a pleasure for my wife Sally and me, along with Ambassador Rowe, to join one of these young men in particular, who persuaded his bar-owning Latvian friend to open the bar at 7.00 a.m. on the last Saturday in September so that any expat Australians so inclined could watch a direct Sky Sport telecast of the AFL Grand Final. We saw the first half before departing for the Ventspils port visit, and who should be playing a significant role in the game but a player of Latvian origin: Jason Akermanis.

This report also outlines the work of the delegation at the 109th assembly of the IPU. As usual, Australia participated fully in those proceedings with delegates attending the debates of the three standing committees. Indeed, the Member for Calwell, Maria Vamvakinou, was elected to the drafting committee of the first committee and I was elected chair of the third committee’s drafting committee.

The assembly was not without controversy. The British delegation, which was to host the 110th assembly in London in April 2004, informed the IPU that the British government would not issue visas to certain nominated parliamentarians from Zimbabwe if they happened to be nominated as part of the Zimbabwean delegation, in conformity with European Union and other international travel bans. The IPU executive committee
concluded that the 110th assembly could therefore not be held in London and would need to be transferred to another venue. This was based on the view that the IPU functions on the premise that meetings of the organisation can only take place when all delegates, freely designated by member parliaments, are assured of receiving the required visa for participation.

The Australian delegation took the view that parliamentarians from Zimbabwe who were not subject to international travel bans imposed because of human rights abuses would be able to attend the assembly in London, that the IPU is an organisation founded on the principles of respect for human rights and the rule of law and that the British delegation had already spent over a million pounds and worked hard preparing for the conference and in the circumstances should retain the right to host the assembly. Accordingly, the Australian delegation put forward a motion that:

... the Governing Council affirm the decision taken in Santiago de Chile that the 110th Assembly of the IPU be held in London in 2004.

The motion was seconded by the delegation from Ireland. Following a debate in which the delegations of Australia, Egypt, Ireland, Namibia, South Africa, Tunisia and Zimbabwe took part, the motion was put to a roll call vote. The motion was defeated by 132 to 87, with 27 abstentions. London will therefore not host the 110th assembly. I believe this is a disappointing result, not least because it has the effect of subjugating the principles of human rights, democracy, freedom and good governance to an administrative rule regarding IPU participation. I understand that the original alternative offered of Bangkok has now been replaced by Mexico.

I thank the members of the delegation for their work in Latvia and Geneva. May I express our gratitude to Ambassador Richard Rowe, who provided excellent assistance and advice in Latvia, and Ambassador Mike Smith in Geneva, who went out of his way to assist the delegation at the IPU. On behalf of the delegation I also recognise the commitment and expertise provided over several years by Mr Phillip Allars from the Department of Foreign Affairs and Trade. We wish him well in his new posting. As always, the delegation secretary Neil Bessell, who I see is in the chamber, performed above and beyond the call of duty to ensure the success of the delegation’s work and I thank him for that. I commend the report to the Senate.

(Time expired)

Question agreed to.

Parliamentary Delegation to Sri Lanka and the 49th Commonwealth Parliamentary Conference, Bangladesh

Senator WATSON (Tasmania) (6.22 p.m.)—by leave—I present the report of the Australian parliamentary delegation to Sri Lanka and to the 49th Commonwealth Parliamentary Conference which took place in Bangladesh from 1 to 12 October 2003. I seek leave to move a motion to take note of the document.

Leave granted.

Senator WATSON—I move:

That the Senate take note of the document.

Because of the time restrictions, I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

Mr Deputy President, the report is in two parts, and I will speak in turn of the parliament’s visit to Sri Lanka and participation in the conference in Bangladesh.

Delegation visit to Sri Lanka

The visit to Sri Lanka enabled members from both sides of politics to contribute to strengthening the bilateral relationship with the country. It
was the first official visit by an Australian parliamentary delegation for eight years.

The main focus of our visit was on the progress of the peace process in Sri Lanka. There have been many recent developments in Sri Lanka in this regard, and this very timely delegation report provides a current picture of the status of the issue.

When we visited, a ceasefire between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (the LTTE) had been holding for 19 months (it has held now for some 21 months). This was the longest ceasefire in almost 20 years of conflict. The ceasefire has provided an important respite for the country and its people from the violence and security restrictions that have been the norm, for the past 20 years. As a result, the economy has improved significantly and a degree of normalcy is beginning to return to the country.

We discussed the peace process in a range of meetings—with the Prime Minister and other representatives of the Government, and representatives of the Opposition, Tamil and Muslim groups, the military and civil society.

We note that the conflict in Sri Lanka reflects many long standing and complex issues. It has continued for almost a generation and many people in the country have had little experience of a country at peace. There are a range of interests and many are mutually exclusive. The Sinhalese and Tamil communities are separated by language and to an extent, geography. There are many and significant grievances on both sides, and there is considerable distrust.

The delegation recognises that in this situation it is extremely difficult to advance the peace process, despite its being in the national interest and in the long term interests of all parties.

A significant factor for the country is that the international community has pledged funding of US$4.5 billion in loans and grants for Sri Lanka’s reconstruction and development over the next four years. Following the LTTE’s suspension of its participation in peace talks with the Government, aid funding is largely not flowing to the country. This is a tragedy for the country and its people. There is, indeed, a compelling irrationality to the country.

Australia has listed the LTTE as a terrorist organisation whose assets in Australia can be seized. It is not considering softening its position.

The delegation urges the LTTE to return to the negotiating table to resume the peace talks and to do so in a spirit of concession and compromise. The people on the ground in the northeast have very real needs, and the aid funding needs to begin to flow now.

The delegation also urges the Government of Sri Lanka and the Opposition to work together constructively for the good of the country and its people. Despite their many differences, the fundamental positions of the two major political parties on the way forward for the peace process, appear similar.

A secondary focus of our visit related to economic issues including opportunities for enhanced trade and investment for Australia. We also visited and assessed the performance of projects funded under Australia’s aid program.

A visitor to Sri Lanka is struck by an impression of a country, to an extent, frozen in time. Sri Lanka’s economy has largely been static for the past twenty years or so. If the ceasefire continues, and if the LTTE returns to the peace talks enabling major aid funding to begin to flow, the economy may be able to begin to take off. As a result, there are many potential opportunities for expanding trade and investment links with Sri Lanka and these are detailed in the report. However, without greater certainty about prospects for peace and the continuation of the ceasefire, there are significant risks for foreign investment in Sri Lanka.

We visited the Jaffna peninsula and saw the widespread destruction there as a result of the conflict. There are many needs on the ground—not the least for the large numbers of people displaced by the conflict who have now returned to the peninsula. We visited aid projects in Jaffna that Australia funds. Australian development assistance to Sri Lanka in 2003/04 is estimated at A$16.2 million. This represents a fifty per cent increase in Australian aid since the beginning of the peace process in February 2002. In increasing its aid, Australia has recognised the important link between development and peace and the importance of rebuilding the country’s north and east.
The delegation noted that, unlike the large international donor pledges, Australia’s aid is flowing to the country, delivered through NGOs and multilateral organisations. Australia’s aid is making a real difference on the ground.

The delegation had high level access in Sri Lanka. The meeting program went well and the delegation was extended warm hospitality. We greatly appreciated hearing the many views and insights into the country. We met up with many Australians in Sri Lanka during our visit-in business, international organisations and as aid workers—and we were impressed by the very able contributions that Australians are making in Sri Lanka.

49th Commonwealth Parliamentary Conference

Mr Deputy President, I turn now to the 49th Commonwealth Parliamentary Conference in Bangladesh.

The second part of the delegation’s report summarises the deliberations of the conference, and includes summary reports from the conference workshops. The theme for this year’s conference was partnerships for global peace and prosperity. The theme recognised the importance of national and international partnerships in many areas of endeavour in addressing the many challenges of the 21st century, including for peace and prosperity.

Our delegation, from the Commonwealth of Australia Branch of the Commonwealth Parliamentary Association was pleased to represent the Australian Parliament at the Conference. The Commonwealth Parliamentary Association aims to promote the advancement of parliamentary democracy and its Annual Conference is a key activity.

Parliamentarians from 47 countries were represented at the Conference. There were opportunities to hear diverse views on the conference theme in the workshop and plenary discussions and to enter into dialogue and discussion. Such conferences can be useful in fostering mutual understanding and encouraging greater international cooperation.

The Australian delegation contributed actively to the Conference. In particular, I and Senator the Hon Robert Ray were discussion leaders at workshops on anti-terrorism legislation and on peace-keeping mechanisms.

We congratulate the Bangladesh Parliament for hosting the Conference and for its hospitality. During our visit to Bangladesh we were able to appreciate the achievements of the country and to understand some of the challenges it faces. There are indeed significant challenges. Bangladesh is one of the world’s poorest countries with 143 million people in a country two thirds the size of Victoria. The delegation noted in this regard that Australia has provided significant development assistance to Bangladesh since the country’s independence in 1971 (more than A$500 million, of which more than half is in development food aid).

The delegation thanks Australian officials in the Department of Foreign Affairs and Trade, AusAID, Austrade, and in the parliamentary departments for their very good work in contributing to the success of the delegation’s visit to Sri Lanka and conference participation.

We thank, in particular, the Australian High Commissioner in Sri Lanka, His Excellency Mr David Binns, Deputy High Commissioner Ms Kate Logan and other staff; the Australian High Commissioner in Bangladesh Her Excellency, Lorraine Barker, Deputy High Commissioner, Dr Michele Forster and other staff; and the delegation secretary, Ms Robyn McClelland.

Finally, I thank the delegation members—Senator the Hon Robert Ray, Senator Mark Bishop and the member for Blair, Mr Cameron Thompson—for their exemplary contributions and performance. We had a very successful and worthwhile visit to Sri Lanka, and made a useful contribution to the success of the 49th Commonwealth Parliamentary Conference, on behalf of the Australian Parliament.

I thank my wife Jocelyn for accompanying me on the visit.

Senator WATSON—I seek leave to continue my remarks, because I think Senator Bishop might wish to make some comments later.

Leave granted; debate adjourned.
AGE DISCRIMINATION BILL 2003
AGE DISCRIMINATION
(CONSEQUENTIAL PROVISIONS)
BILL 2003
First Reading
Bills received from the House of Representatives.

Senator PATTERTON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.23 p.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading
Senator PATTERTON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.24 p.m.)—I table a revised explanatory memorandum relating to the Age Discrimination Bill 2003 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

AGE DISCRIMINATION BILL 2003

This bill implements the Government’s 2001 election commitment to develop legislation to prohibit age discrimination and will eliminate, as far as possible, age discrimination in key areas of public life.

Need for Age Discrimination Legislation

Despite existing State and Territory laws, age discrimination is an increasingly significant problem for our society.

The Nelson Report, Age Counts, found that age discrimination against older workers is prevalent and is caused by negative stereotyping of older workers.

The Human Rights and Equal Opportunity Commission’s 2000 report, Age Matters, also identified many areas in which age discrimination occurs.

These reports—and many others—highlight the negative consequences of age discrimination on both the economy and on the health, financial and psychological wellbeing of individuals.

The bill is consistent with the international commitment to eliminate age discrimination ensuring the full participation in public life by older persons as reflected in the Political Declaration adopted by the Second World Assembly on Ageing 2002.

Response to Demographic Changes in Australia

The social and economic costs of age discrimination will only increase with the demographic changes taking place in the Australian population.

In a speech about the Government’s strategic priorities in November 2002, the Prime Minister noted that: “in maximising labour force participation, it is important that the skills and experiences of older Australians are fully utilised …”

This bill will remove barriers to older people participating in society—particularly the workforce.

Areas Covered by the Bill

The bill is consistent with existing Commonwealth anti-discrimination laws and all State and Territory anti-discrimination laws.

It covers both direct and indirect discrimination.

The areas of public life covered by the bill include: employment; access to goods, services and facilities; access to premises, places and public transport; administration of Commonwealth laws and programs; accommodation; land; and requests for information on which unlawful age discrimination might be based.

Exemptions

All anti-discrimination laws must strike the right balance between prohibiting unfair discrimination and allowing legitimate differential treatment.

The bill takes a commonsense approach and exempts legitimate distinctions based on age.
For example, the bill allows for appropriate benefits and other assistance to be given to people of a certain age—particularly younger and older Australians—in recognition of their particular needs or circumstances.

This is why the bill provides for a positive discrimination exemption for such benefits.

The bill also provides exemptions for age discrimination in superannuation, taxation, health, social security and migration laws. Age differences in these areas are based on distinct and broadly accepted social policy rationales. These laws are subject to ongoing scrutiny—precisely because they deal with such complex social policy issues.

Importantly, the bill does not impose a permanent blanket exemption for Commonwealth laws. However, in addition to the specific exemptions outlined above, the bill does provide a two year exemption for all Commonwealth laws. This will ensure that the case for further legitimate exemptions (if any) can be tested.

**Impact on Business**

Of course, age discrimination also poses problems for business. Stereotypical views about the capacity of older Australians prevents business from getting the best person for the job. Age is not an indicator of capacity and must not be used as a blunt proxy for capacity.

This legislation protects against age discrimination and the approach taken is also fair for business. Employers and industry were closely involved in the development of this bill.

The bill ensures on a national basis that all Australians have equality of opportunity to participate in the social and economic life of our country.

**Human Rights and Equal Opportunity Commission**

The bill confers functions on the Human Rights and Equal Opportunity Commission similar to those that it has in other areas of unlawful discrimination. These functions include inquiring into and conciliating complaints of discrimination, and input into policy development.

Consistent with the Government’s proposed reforms to the Commission, the bill does not provide for an age discrimination commissioner.

The Government strongly believes that education about human rights and responsibilities is the most effective way to build respect and tolerance for human rights.

The bill will play a key role in changing negative attitudes about older and younger Australians.

**Public Consultation**

This bill is the result of extensive consultation with the community.

The work of the Core Consultative Group on age discrimination reforms was the blueprint for this bill. This Group represented diverse organisations including business and community representatives.

Earlier this year I sought comments from the community on the Government’s detailed proposals for age discrimination legislation.

I am delighted with the widespread support for the Government’s decision to introduce age discrimination legislation.

**Senate Legal and Constitutional Committee Report**

The Senate Legal and Constitutional Committee considered the bill and issued its report on 18 September 2003.

The Committee commented very favourably on the extensive consultation process which informed the development of the bill.

It noted that there was wide support for the bill.

I would like to respond briefly to the 5 recommendations of the Committee.

I do not propose to comment at this stage on the dissenting reports.

The Committee’s first recommendation is that the scope of the dominant reason test in clause 16 be further ‘defined’, and the clause amended to specify who bears the onus of proof in establishing the dominant reason for discrimination.

The Government does not consider that the recommended amendments are necessary.

In the area of age discrimination, action should be unlawful only where age is the dominant consideration.

It is the Government’s view that this test will be most appropriate to promote the attitudinal change it seeks to achieve.
The bill, including clause 16, is designed to send a clear message that age stereotyping is unacceptable, without suggesting that age can never be a relevant consideration.

The Committee’s second recommendation is that the Government consider expanding the ‘workplace relations’ exemption at subclause 39(8) to cover industrial agreements made under State law.

The case for such an expansion has not been made out.

The current exemption covers federal agreements. In the federal sphere, the Australian Industrial Relations Commission and the Employment Advocate must have regard to the need to eliminate discrimination, including age discrimination.

State industrial relations arrangements vary between jurisdictions.

Some States make no mention of anti-discrimination provisions or the need to eliminate age discrimination.

The Commonwealth cannot be confident that all State arrangements deal with the potential for age discrimination.

The Committee’s third recommendation is to amend clause 15—which effectively defines ‘indirect discrimination’—to specify what factors must be taken into account when considering whether action is ‘reasonable’ in the circumstances.

Action that is ‘reasonable’ cannot constitute indirect discrimination.

However, inclusion of a list of matters to be taken into account in determining what is ‘reasonable’, as in the Sex Discrimination Act, could result in a more restrictive interpretation.

There is likely to be a wide range of ‘reasonable’ circumstances in relation to age discrimination.

The explanatory memorandum identifies some of these.

The bill needs to be flexible enough to cover all such circumstances.

As the proposed amendment would not work to that end, it is not supported by the Government.

The Committee’s fourth recommendation is that the Government consider whether the Human Rights and Equal Opportunity Commission requires additional funding.

The Government’s general position is that agencies are not provided with new resources for functions that can and should be absorbed in the normal process of adjusting priorities as circumstances change.

The Commission receives a total budget to deal with the entire spread of its responsibilities, not separate budgets for particular areas of discrimination.

Age discrimination already falls within the Commission’s broader education and inquiry function.

The Government is still considering the 2003-2004 budget for the Commission.

The Committee’s fifth recommendation is to extend the concept of age discrimination to cover an aggrieved person’s relative or associate.

A case for the extension of the legislation into this area of public life has not been made out.

The report’s case for new provisions covering discrimination on the grounds of the age of a person’s associate appear for the moment to rest on less than compelling grounds.

The protection offered by the bill is already extensive.

It has been suggested that amendments to cover relatives and associates are needed, for example, to deal with hoteliers who may exclude a person because that person has unruly children.

However, as drafted, the bill would permit a complaint on behalf of children who were unlawfully excluded from premises on the basis of age.

It has also been suggested that amendments are needed to cover a situation where a person is not employed because he or she may need to take time off to care for an aged relative.

However, it is not at all clear that this is a matter of age-based discrimination.

Complex questions of family responsibility are not reducible to questions of age-discrimination.

It is not realistic to look to age discrimination legislation to solve such questions.

The issue of family responsibilities is addressed in other forums; for example the Sex Discrimination Act and the Workplace Relations Act.
Conclusion
This bill is good news for Australians of all ages.
This bill will send a powerful national message about the importance of eliminating unfair age discrimination.

AGE DISCRIMINATION (CONSEQUENTIAL PROVISIONS) BILL 2003
I am pleased to introduce the Age Discrimination (Consequential Provisions) Bill 2003 into Parliament.
This bill accompanies the Age Discrimination Bill 2003 and provides amendments to other Commonwealth laws, which will be necessary following commencement of the Age Discrimination Act.
The main consequential amendments that are necessary concern the Human Rights and Equal Opportunity Commission Act 1986.
In particular, the effect of these amendments will be to extend the Human Rights and Equal Opportunity Commission’s education and public awareness role to include addressing the issue of age discrimination.
Further, the Commission’s role in the investigation and conciliation of complaints of unlawful discrimination based on race, sex or disability will be extended to include complaints that allege unlawful age discrimination.
The consequential amendments will give the federal court and federal magistrate’s service jurisdiction to deal with applications that make allegations of unlawful age discrimination.
This bill will also amend several other Commonwealth Acts that refer to the existing suite of Commonwealth anti-discrimination laws so as to include a similar reference to the Age Discrimination Act.
Schedule 2 of this bill provides amendments that will be necessary when both the Age Discrimination Act and the Australian Human Rights Commission Legislation Act 2003 have commenced.

Conclusion
This bill will assist the implementation of the Age Discrimination Act, which is an important step towards addressing and reducing age discrimination and promoting a fair go for all Australians.

Debate (on motion by Senator Mackay) adjourned.

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

TAXATION LAWS AMENDMENT BILL (No. 5) 2003
CUSTOMS LEGISLATION AMENDMENT BILL (No. 2) 2003
First Reading
Bills received from the House of Representatives.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.25 p.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 shall be moving a motion to have the bills listed separately on the Notice Paper. I move:
That these bills may proceed without formalities and be now read a first time.
Question agreed to.
Bills read a first time.

Second Reading

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.26 p.m.)—I table revised explanatory memoranda relating to the bills and move:
That these bills be now read a second time.
I seek leave to have the second reading speeches incorporated in Hansard.
Leave granted.

The speeches read as follows—
TAXATION LAWS AMENDMENT BILL  
(No. 5) 2003
This bill makes amendments to the income tax law and other laws to give effect to the several taxation measures.
Firstly, this bill includes amendments that implement changes to the thin capitalisation regime. The thin capitalisation provisions, which commenced on 1 July 2001, ensure that multinational entities do not inappropriately allocate an excessive amount of debt to their Australian operations. The amendments in this bill will ensure that the legislation is consistent with the Government’s policy intentions and further clarifies aspects of the operation of the law. The measures will assist business in effectively complying with the thin capitalisation measures.
The most significant amendments in the bill relate to the application of the thin capitalisation rules to securitisation vehicles and financial entities. There are also important changes to the record keeping requirements for permanent establishments and to the revaluation of assets.
The amendments in the bill will generally reduce compliance costs for taxpayers and will ensure that taxpayers undertaking similar activities are able to apply the same thin capitalisation rules.
Secondly, this bill amends the Fringe Benefits Tax Assessment Act 1986 from 1 April 2003 so that fringe benefits provided to employees whose duties are performed in, or in connection with, a public hospital will qualify for the $17,000 capped fringe benefits tax exemption, regardless of whether or not the hospital is a public benevolent institution.
In addition, the amendments provide that for the purposes of the fringe benefits tax exemption for remote area housing, a remote area for a public hospital will be one that is at least 100 kilometres from a population centre of 130,000 or more, regardless of whether or not the hospital is a public benevolent institution.
Thirdly, the amendments implement the Government’s 2001 election commitment to reduce the tax rate on the excessive component of an Eligible Termination Payment (that is, a lump sum) from a super fund. The reduction is delivered through a cut in the tax rate from 47% to 38% on the excessive component originating from a taxed source and a reduction in the amount of contributions which are subject to the superannuation surcharge. The amount of the reduction will depend on the contributions, if any, made to the super fund in the year that the excessive lump sum payment is paid.
Fourthly, amendments in this bill will overcome an anomaly in the tests that apply to companies deducting prior year losses and bad debts written off. The amendments will ensure companies are not prevented from accessing the same business test because they are unable to determine a precise date on which they failed the continuity of ownership test.
Lastly, this bill makes amendments that will allow corporate tax entities to be able to choose the amount of prior year losses they want to deduct in an income year. This will ensure prior year losses are not used up against franked dividend income which has already effectively been freed up from tax by way of the franking tax offset. Similarly, entities will not be required to use up current year losses against franked dividend income. The current year loss will be carried forward for deduction in a later year of income.
Full details of the measures in this bill are contained in the explanatory memorandum.
I commend this bill.

CUSTOMS LEGISLATION AMENDMENT BILL (No. 2) 2003
This bill, the Customs Legislation Amendment Bill (No 2) 2003, will make amendments to the Customs Act 1901, the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001 (the Trade Modernisation Act) and the Customs Legislation Amendment Act No 1 2002 to address Customs activities involving the movement of imported and exported goods across the Australian border.
The Trade Modernisation Act underpins Customs Cargo Management Re-Engineering project, critical components of which are complex new computerised information systems known as the Integrated Cargo System (ICS) and the Customs Connect Facility (CCF). Amendments in the bill affect both systems.
Part 1 of the bill contains an amendment to the “outturn reports” provisions to remove the requirement for stevedores to communicate nil cargo reports to Customs during periods where no containers are discharged from a vessel at a wharf.

An outturn report is communicated by stevedores to Customs and provides Customs with the ability to monitor cargo being unloaded from a vessel at a wharf.

Part 2 of the bill introduces an amendment to improve Customs’ ability to control, monitor and examine high-risk export goods.

When the export provisions in the Trade Modernisation Act commence, a report will have to be made to Customs when goods are removed from a wharf or airport, otherwise than for export.

The amendment ensures that this report must be made to Customs before the removal of the goods.

Notification before removal will ensure that Customs is able to more effectively track the movement of high-risk goods, including goods that may be improperly diverted into the domestic market.

Part 3 of the bill concerns electronic communications. These measures are intended to apply to communications made for the purposes of acquitting import and export obligations under the Customs Act. They seek to re-establish provisions in the Act for the attribution of client identity and non-repudiation of ownership of information communicated to Customs for import and export purposes.

Similar provisions have resided in the Customs Act since 1992 in relation to the various ‘legacy’ systems known as COMPILE, EXIT and the Air and Sea Cargo Automation systems. But the relevant provisions are inappropriately being removed by the items of the Trade Modernisation Act that repeal the references to those legacy systems.

The repeal of those sections, combined with the operation of section 15 of the Electronic Transactions Act 1999, exposes Customs to a greater degree of uncertainty around the authorship of electronic communications and a greater risk of an author disowning a communication than that which exists currently.

Unlike the more generic electronic communications to which the Electronic Transactions Act applies, it is critical for ensuring the integrity of information relating to goods coming into and going out of Australia to have a means to establish with certainty who has sent the information to Customs, and that the communication can be relied on in the form in which it was sent.

In part this will be achieved by the adoption of public key infrastructure technology, in line with the Government’s strategy for securing online transactions, but this amendment is necessary to underpin that practical solution.

Re-establishing these provisions will reduce risk, create a clear chain of communication and increase the overall level of clarity and confidence that all users will have in the relevant information systems.

The measures in Part 4 of the bill clarify the operation of the Customs Act provisions relating to false and misleading statement offences.

The first two amendments recognise the variety of commercial communication arrangements available to people with obligations to report to Customs and also that the accuracy of the information in those reports can be affected in various ways at different stages of the communication chain.

The first clarifies that liability for offences of making false and misleading statements to Customs is not only on the person who communicates the statement but also on persons who caused the statement to be made.

The second measure makes a similar amendment in relation to record retention obligations in the Customs Act so that all persons involved in preparing or sending communications to Customs will have to keep records that verify the content of the communication and identify the source of the information included in the communication.

The third measure clarifies the circumstances in which a ‘voluntary disclosure’ can be claimed as a defence to strict liability offences for false and misleading statements.
For this defence to apply any disclosure must be made before Customs exercises a power to verify the information in the statement.

If the false statement was one that resulted in an underpayment of duty, the outstanding duty must also be paid for the defence to apply.

Also, the error notice must be given before a penalty infringement notice is served or proceedings commenced by Customs.

The fourth measure in this Part clarifies that false statements made in refund and drawback applications will constitute an offence even if the refund or drawback is not paid.

Part 5 of the bill contains a technical correction to the Customs Legislation Amendment Act No 1 of 2002 to ensure a currently misdescribed amendment will be able to work.

Part 5A of the bill provides for the maximum time for commencement of the Trade Modernisation Act to be extended from three years to four years beginning on the day on which that Act received the Royal Assent. It was originally considered that the three year period was sufficient time to allow not only for the development of the ICS and CCF by Customs, but also for the development, testing and deployment by industry of business systems compatible with them for communicating with Customs. However, it has become apparent that even this time frame will place pressure on the trading community’s ability to adjust, particularly to the new import components of the system, which could in turn significantly disrupt trade.

While this extension of time will allow an extra year for development and testing of the ICS as a contingency measure, it is expected that the ICS will be operational well before the end of the period.

Part 6 of the bill will reinstate the right to seek review of decisions relating to the administrative penalty scheme by the Administrative Appeals Tribunal.

This scheme existed prior to the commencement of the relevant parts of the Trade Modernisation Act and was replaced by a new infringement notice scheme in July 2002.

Finally Part 7 of the bill contains amendments to establish effective arrangements for the transition between Customs legacy electronic systems and the new ICS.

Current legislation assumes that transition is possible within minutes of the legacy system shutting down.

Following consultation with industry, Customs has responded to feedback that industry would favour a much longer transition period, and a period of up to 30 days is provided in the amendments.

The amendments will allow the export industry more time to both finalise transactions started in the legacy systems, and to initiate new transactions in the ICS. The amendments will ensure that during the transition to new electronic system trade will not be hindered and nor will Customs’ controls over the export of goods be compromised.

The amendments will also allow the CEO of Customs to determine that transactions in the legacy system that have not reached the final step may still proceed. The CEO will only be able to exercise the power to determine if he is satisfied that exceptional circumstances, for example, bad weather, delayed, or will delay the exportation of the goods.

A minor amendment will also suspend the new penalties for not reporting to Customs the delivery and receipt of cargo at a wharf or airport until the end of the transition period.

Similar transition amendments relating to import transactions are intended to be introduced before commencement of the imports phase of the Integrated Cargo System.

Debate (on motion by Senator Mackay) adjourned.

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

Ordered that the bills be listed on the Notice Paper as separate orders of the day.
WORKPLACE RELATIONS AMENDMENT (IMPROVED PROTECTION FOR VICTORIAN WORKERS) BILL 2003

First Reading

Bill received from the House of Representatives.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.27 p.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 PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.28 p.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

WORKPLACE RELATIONS AMENDMENT (IMPROVED PROTECTION FOR VICTORIAN WORKERS) BILL 2003

The Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003 is beneficial legislation which contains a range of measures designed to improve the employment conditions of Victorian workers, while maintaining the single system of workplace relations arrangements applying in that State.

The most significant measure in the Bill is an amendment to the Workplace Relations Act 1996 to enable the Australian Industrial Relations Commission to declare federal awards to be common rules in Victoria. The working conditions of employees who are not covered by federal awards or agreements will also be improved, with the Bill containing a number of enhancements to the safety net provided by Schedule 1A of the Workplace Relations Act 1996. In addition, the Bill reflects the fact that the existence of a unitary system in Victoria rests on a reference of legislative power from the Victorian Parliament. In recognition of this reference of power, the Bill will confer upon the Victorian Government intervention rights before the Australian Industrial Relations Commission in Victorian specific proceedings. The Bill also seeks to improve the situation of contract outworkers in the textiles, clothing and footwear (TCF) industry. This Bill will result in contract outworkers in the Victorian TCF industry, for the first time, having access to enforceable minimum rates of pay.

Victoria has derived significant benefits from having its workplaces regulated by a unitary workplace relations system. Particularly given that the system in operation in Victoria is the Commonwealth's with its focus on flexibility and workplace bargaining. Given the economic benefits the Commonwealth's workplace relations system has generated for Victoria, the Government would prefer to maintain the system in its current form. However, the Commonwealth is prepared to introduce common rules in Victoria rather than see the Victorian Government carry through on its threat to re-create its own separate workplace relations system. The recreation of a separate state-based system would lead to increased cost and complexity for Victorian employers and employees.

This Bill will give effect to Victoria’s referral of power by amending the Workplace Relations Act to enable the Australian Industrial Relations Commission to declare federal awards to be common rules for industry in Victoria. Common rules will mean that all workplaces in an industry will be covered by the same award. Any common rule will reflect the safety net nature of federal awards and be limited to the same 20 allowable matters as all other federal awards. Common rules will also not interfere with the operation of Australian Workplace Agreements or Certified Agreements that are currently in place or the abil-
ity of employers and employees to enter into such agreements.

The implementation of common rules in Victoria will give all Victorian workers greater access to the Federal award system. Common rules will be of particular significance to the approximately 350,000 Victorian workers who are currently not covered by Federal awards.

The Government has also sought to ensure that this Bill minimises any possible disruption of Victorian business. The Bill will provide a 12 month transitional period designed to provide breathing space, during which Victorian employers can ensure they are prepared for any effects the introduction of common rules may have on their operations. During this 12 month period the Australian Industrial Relations Commission will be able to hear applications for common rules and even make declarations. However, any declarations the Commission makes during this period will not come into effect until at least 12 months after the commencement of this Bill.

The Bill also recognises the right of the Victorian Parliament to continue to legislate on those aspects of workplace terms and conditions not provided for by the Commonwealth. The Bill makes explicit that Commonwealth common rules are not designed to cover the field and that any Victorian legislation capable of concurrent operation with a common rule should be given effect.

The Government believes that the common rule provisions of the Bill present an appropriate compromise between allowing employees greater access to the federal award safety net and minimising any possible disruption of employers’ business operations.

The Government calls on Labor Senators to support this Bill. Especially, given that the alternative to the introduction of common rule to Victoria would see the Victorian Government re-creating its own separate workplace relations jurisdiction. Requiring employers and employees to thread their way through two competing jurisdictions would only increase the complexity and costs of employing staff in Victoria.

The Bill will also improve the conditions of Victorian employees not covered by federal awards or federal agreements. Such employees are presently protected by a legislated safety net of minimum conditions contained in Schedule 1A of the Workplace Relations Act 1996. The Schedule 1A conditions are largely a continuation of the safety net provisions that applied under Victorian State law immediately prior to the 1996 referral. That referral established a single framework of laws regulating industrial matters in Victoria to the benefit of Victorian employers and employees.

The Bill will enhance, in a sensible way, the legislated safety net of minimum conditions of Schedule 1A employees (without negatively impacting on employment), and does so within the framework of a unitary system.

In summary, the policy measures contained in this Bill would amend the Workplace Relations Act to:

- clarify the operation of the Schedule 1A minimum entitlements to annual leave and sick leave (sick leave being incorporated into carer’s leave) by providing a basis upon which these leave entitlements are to be calculated, and setting out rules about access to, and accumulation of, such leave;
- give Schedule 1A employees a statutory entitlement to be paid for work performed in excess of 38 hours a week;
- provide federal inspectors with the power to enter and inspect premises where they reasonably believe that Schedule 1A work is being performed;
- provide that a breach of the minimum conditions of employment in Schedule 1A can be enforced in the same way as federal awards and agreements;
- provide an employer with a statutory entitlement to stand down a Schedule 1A employee where that employee cannot usefully be employed due to circumstances beyond the employer’s control;
- provide the power to make regulations requiring employers to keep and maintain employee records for Victorian employees who are not employed under federal awards or agreements;
- create a legislative entitlement to carer’s leave for Schedule 1A employees; and
create a legislative entitlement to bereavement leave for Schedule 1A employees.

In relation to carer’s leave, the Bill proposes to convert the current five day sick leave entitlement in Schedule 1A into a personal leave minimum standard of eight days per annum, which would be cumulative. Of those eight days, up to five days per annum could be taken for caring purposes. In relation to bereavement leave, the Bill proposes to amend Schedule 1A to introduce a minimum standard of two days bereavement leave on the death of an immediate family member or household member. These amendments would provide a comparable minimum standard to carer’s and bereavement leave as was proposed in the State Bill.

Victorian employees with disabilities who are not employed under a federal award or agreement do not currently have direct access to the Supported Wage System. At present such employees can only use section 509 of the Workplace Relations Act, which allows the Australian Industrial Relations Commission on a case by case basis, to issue an appropriate wages certificate for 12 months duration.

It would be preferable to give these employees direct access to the Supported Wage System, which has been designed to meet the requirements of the Disability Discrimination Act 1992, and has the support of peak disability groups, the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions. Accordingly, the Bill proposes to provide access to the Supported Wage System by amending Part XV to give the Commission power to determine that the Supported Wage System applies to Schedule 1A employees within a work classification in a declared industry sector.

The Victorian Government has claimed that since the Kennett Government’s referral of powers, it has not had the ability to intervene in major Victorian industrial disputes. In fact, all State Governments can seek leave to intervene before the Australian Industrial Relations Commission in cases where they have a sufficient interest. However, in recognition of the specific circumstances of the Victorian Government arising from the 1996 referral of powers, the Bill will amend the Workplace Relations Act to give the Victorian Government a statutory right to intervene in proceedings relating to Victoria. This will mean the Victorian Government will be able to intervene in common rule proceedings, applications to suspend or terminate a bargaining period, and applications to adjust minimum wages orders.

The Bill also contains amendments to the Act to improve the conditions of contract outworkers working in the Victorian textile, clothing and footwear (TCF) industry.

The Bill would introduce a requirement that contract outworkers in the TCF industry in Victoria receive at least the minimum Schedule 1A rate of pay applicable to employed TCF outworkers, or the minimum rate payable under a relevant common rule award, whichever is the higher. This entitlement to a minimum rate of pay will not restrict the ability of the Victorian Parliament to implement its own initiatives through Victorian legislation capable of concurrent operation.

The Bill would also authorise federal workplace inspectors to enter premises where contract outwork is performed and empower inspectors to enforce the minimum remuneration requirement and seek remedies in the courts, on behalf of the outworker, where non-payment or under-payment is identified.

This Bill, when enacted, will deliver substantial benefits to Victorian workers and TCF outworkers. It will do so in a responsible manner, retaining the benefits of existing employment arrangements under Schedule 1A within the one regulatory framework.

Debate (on motion by Senator Mackay) adjourned.

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

Sitting suspended from 6.28 p.m. to 7.30 p.m.

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

Second Reading

Debate resumed.
Senator MACKAY (Tasmania) (7.30 p.m.)—On behalf of Senator Webber, I seek leave to have the remainder of her speech incorporated in Hansard.

Leave granted.

Senator Webber’s incorporated speech read as follows—

We are going to take this child and make them sit a test.

A test that is as much about the time taken to complete the test as it is about the correct answer.

We run the risk that this bright intelligent student will be labelled as performing on a below average level because they won’t complete the test.

The answers they do complete will be right there just won’t be enough questions answered.

This is one of the problems with this kind of national approach.

We label people, in many cases, unfairly or inappropriately.

We have seen this in the past with IQ testing, and in fact in any kind of national testing.

No model, no test works for the whole population.

There is no doubt that this is a problem confronting indigenous students.

It is clear from evidence that the rates of literacy and numeracy for indigenous students are significantly lower than for the rest of the community.

There are also concerns about students who are educationally disadvantaged.

This includes boys, students from rural areas, students from non-English speaking backgrounds and low socio-economic backgrounds.

One of the key benefits of any education policy must be to ensure that no-one is left behind.

This of course ties in to the other section of this amendment bill.

That of course is the increase in capital grants for non-government schools.

It is clear in this time of rapid technological change that investment in infrastructure is one of the key drivers for the future.

Capital grants are about ensuring that schools upgrade that infrastructure.

Without investment in infrastructure schools and students are at risk of being left behind.

What this amendment does is to only modify the capital grants to non-government schools.

This amendment increases the funding for non-government schools by 41 million.

This takes the expenditure for non-government schools to 87 million.

There is not one red cent for government schools.

From this approach the average person could probably assume that government schools do not require any increase in capital grants.

That the infrastructure in government schools is all up to standard.

One only needs to go into most government schools and to look at how few IT resources they actually have.

I can go to the Private Schools around my electorate office and see computer labs and computer resources that most public schools simply do not possess.

You have to wonder as I do, when people tell me that part of the requirement for their children to attend private high schools is that they have a lap top computer.

You compare that to government high schools where there are not many situations that each student has access to a computer let alone a lap top computer.

We have to only look at the figures contained within the National Report on Schooling in Australia.

The report shows that expenditure on capital works in government schools in 2000 was approximately 350 dollars per student.

The report goes on to show that the expenditure on capital projects in non-government schools was around 1500 dollars per student.
Let us just get this right.
350 dollars per student in government schools
1500 dollars per student in non-government schools
And this amendment bill is about increasing the capital grants to the non-government schools from 41 to 87 million.
It makes sense of course.
This government, not satisfied with increasing the funding to the non-government schools over the seven years since 1996, now put in yet another fix.
Those opposite have no shame.
They are happy to come in here with yet another fix.
They are going to increase the funding to non-government schools, schools that already spend nearly 4 times as much on capital expenditure as government schools and they do it and pretend that it is good policy.
This is not good policy this is a political fix.
Maybe there is going to be an election next year.
What better than to have all the non-government schools getting a larger slice of capital grants.
Just in time for local Liberal members to run around and do all the earth turning ceremonies.
Nothing like an election to put some extra money in the trough for the Liberals and Nationals to hand out to their mates!
Where is the Commonwealth Government’s support for the infrastructure that is needed in all schools—not just the private ones?
Where are the computer laboratories, the new science buildings, the land, the buildings, and in fact the future of our Government schools?
It is time that those Senators opposite acknowledge one simple fact.
When all the sources of funding are included, regardless of whether it is Federal, State or money from parents, the non-Government schools are spending four times as much on capital projects than government schools.
This amendment bill is a fraud.

Those opposite through this amendment are saying that even though non-Government schools are spending four times as much, it is not enough.
More money needs to come from the taxpayers to support the capital expenditure in non-Government schools.
This is not good enough.
For a Government elected on the slogan of “For All of Us” this is yet another example of it being only for “Some of Us”!
The other area of concern that I have in relation to this funding is the degree of accountability that exists.
Do we know what this money is spent on?
Do we know whether certain schools receive excessive levels of funding under this program?
Do we know that the facilities being built are about improving education outcomes?
When Commonwealth monies are expended there should be full and open reporting of that expenditure.
It is not good enough that the 87 million contained in this amendment will receive less than full reporting.
I believe that there is an important role for the Commonwealth supporting the capital investment in our schools, government and non-government.
I am strongly in favour of this funding following need.
I am not in favour of simply increasing the funding for one group over another.
I do not support this expenditure without full and open reporting that allows the taxpayers to make objective decisions about its value.
We must not allow two education systems to develop in this country where one has preferential treatment and funding over the other.
Education is too important to be left to those opposite.
Their cronyism is no substitute for effective policy.

Senator CROSSIN (Northern Territory) (7.30 p.m.)—The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003 is another glaring example of
this government's failings in education policy. The purpose of this bill is to fund capital projects in non-government schools and targeted programs for schools in both private and public sectors. It is further evidence of this government’s inequitable approach to school policies in Australia. It allocates a further $41.84 million for capital grants to approved non-government schools—not private schools, in other words—and says absolutely nothing about capital needs in public schools.

My colleague in the other place, the shadow minister, pointed out in her speech in the second reading debate that the minister mentioned government schools only twice in his speech. What an attitude—that public schools would account for so little when they cater for so many—but, of course, we know that under this government 70 per cent of the funding goes to only 30 per cent of the children, those attending private schools in this country.

While other state and territory ministers for education have jointly supported public schools across Australia as a matter of national priority, the federal minister has refused to join them. He has refused, on behalf of this government, to make a commitment and stick to it when it comes to public schooling. Such a commitment is necessary. This nation needs a strong and vital public school system as well as support for non-government schools, but on a needs basis. Right now it is a fact that government schools across the nation have serious capital needs which this government is ignoring while at the same time pouring funds into private schools.

Eighty-five new private schools opened across Australia in 1999-2002. They had a total enrolment of around 8,000. The biggest, the Australian Islamic College, had 1,100, but many had less than 100. How can such small private schools be viable? They are and will remain heavily dependent on government grants to survive. But under this government, no worries—they get all the support and funding they need, to the detriment of public schools.

Although these schools received Commonwealth establishment grants, the Australian Education Union has queried whether some of them really were new. AEU research officer Roy Martin says a surprising aspect is that at senior secondary level two out of three have less than 40 students. Their course offerings must be limited and they must be operating on the margin of viability. At the primary level, smaller schools must have composite classes. Nevertheless, they know the Howard government will back them. Senator Carr this afternoon gave some examples of private schools which had received massive amounts of funding in capital grants only to close less than two years later.

Why does this government continue to encourage the opening of such small, unviable schools highly dependent on funding? It can only be because it is blinkered and hide-bound by its ideology of privatising everything. It is also a fact that students moving to these schools receive an annual subsidy in the form of an establishment grant while they would not be eligible for such a subsidy if they were to stay in a larger, more viable school. These small private schools are draining more and more resources from the larger public and more viable schools with legitimate claims on the public purse. In Educare News in March 2003 Roy Martin said:

The school funding landscape has undergone seismic shifts since the Coalition came to power in 1996 ... private schools ... now have resource levels above, and well above those of public schools. Additionally the current funding philosophy that ignores a school’s private income and capacity will worsen the situation.
In fact, that policy, the backbone of this government’s philosophy/ideology, is simply allowing private schools to proliferate and become more and more elitist, taking up an increasing proportion of public funds while public schools suffer. This fits in with modern theories of social exclusion, which argue that, at the rich end, there is voluntary exclusion—wealthy people choosing to isolate themselves from the mainstream hoi polloi. The elite end of private education is now like the American gated communities for the wealthy. Current funding policy ensures Commonwealth subsidies for such social exclusion and elitism. At the other end of the spectrum there are no constraints on opening private schools which then cry ‘needy’ and get Commonwealth subsidies. This government has allowed the private school sector to get out of control. Despite the fact that the great majority of these private schools get subsidised to over 80 per cent of operating expenses, they are able to operate beyond any schooling policy directed at the national interest, social cohesion, equity or, indeed, public accountability.

This is not to attack the overall outcomes of the Australian school system. Despite years of bad policy from the Howard government, we are fairly well rated in academic terms, although certainly not the best. The Program of International Student Assessment report released towards the end of 2002 showed that the performance of Australian school students was comparable with the best in the other OECD countries; for example, only Finland was better in literacy and Japan in mathematical literacy. On the whole, we were in the top seven. On such international comparisons one may believe there is no crisis.

However, the PISA report outlined a major area in need of attention: Australia was among those countries where socioeconomic background was a most important determinant of educational outcome. They concluded that, in terms of a fair go, Australia is not doing so well. Inequity is increasing and family income is becoming more important for a child’s life chances. According to Roy Martin of the Australian Education Union:

The concentration of poverty is now extreme, and is, with very few exceptions, distilled into government schools.

Pat Byrne, the Federal President of the Australian Education Union, said at the Public Education Day back in May:

The results show a relatively strong relationship between social background and achievements. This will be exacerbated by the federal government’s diversion of valuable public sector funding to the wealthy private sector.

We have reached a stage in this country where two-thirds of federal schools expenditure goes to private schools, which enrol about one-third of our students. So 70 per cent of this government’s expenditure goes to about 30 per cent of students. This year, Commonwealth funds to private schools actually exceeded those to higher education. Just think of that: the government contributes more to private schools in this country than it does to the provision of higher education. In a media release on 13 May the Australian Education Union said:

Treasurer Peter Costello and Education Minister Brendan Nelson have failed students and their parents. They’ve abandoned the 70% of students who choose public education as their right ... Under this government, public investment in public education in Australia remains at the bottom end of OECD countries as a proportion of GDP.

In fact, Professor Tony Vinson, speaking at the AEU federal conference early this year, stated that figures showed Australia was 22nd among the 29 countries listed. Professor Vinson was also critical of the diversion of funds to private schools and said:

The private purchase of that privilege might be justifiable but the diversion of public funds to
sustain it in circumstances where public education urgently needs additional resources is not.

This government has a long history of uncaringly pursuing policies driven purely by ideology with no thought for the good of the majority or the nation, and public education is one such area where it is driven by privatisation and user-pays. This government tries to persuade the nation that it is good for developing choice and options. What it is doing is redefining public education from the notion of it being a public good to a marketplace commodity. It is doing this with something—education—in which we all have a stake, but few are having any say in its policies.

This government is succeeding in giving ‘choice’ and shifting more students across to private schools. It is doing this by allowing private schools, with heavy government support, to proliferate without regulation—no assessment of viability, the effect on other schools in the area or enrolment numbers. It has shifted $1,700 per student from Commonwealth to private schools through the enrolment benchmark adjustment. The next piece of its jigsaw is to abolish the Education Resources Index and, irrespective of self-generated wealth, the private schools to continue to get federal funds.

Way back in May 1999, Associate Professor Alan Reid from the University of South Australia in a paper delivered to the AEU conference criticised these policies which are enormously biased towards private schools, seeing this as a grave threat to our democratic system. He said:

A democracy requires a public ... The institution of public schooling, more than any other in our society, is central to the making of democratic ‘publics’. Public schools don’t just exist to serve the public by educating individuals. They actually turn a group of individuals with a host of differences into a civic entity we call a ‘public’.

The present government policies are pulling this system apart and replacing it with a divided system where diversity within schools is reducing—the elite will have their schools and the lower socioeconomic groups will have theirs. Broadly speaking, individual private schools represent a certain section of population with similar characteristics such as class or religion. Income will determine where students go. Diversity within schools will reduce and so will the making of a truly democratic public.

This is the hidden part of the government’s agenda. This will be the end result of its policies. The minister either did not read or does not care about information on capital funding that was included in the National report on schooling in Australia. This report revealed that capital expenditure in government schools in 2000 was $350 per student whereas in private schools capital spending was some $1,500 per student from all sources. While these figures are averages, they still indicate how far behind the public schools are. The needs of government schools for capital facilities are clear. But, of course, this minister also has a history of pushing responsibility for government schools to states and territories and families.

Furthermore, as I indicated earlier, these taxpayer provided funds being given to private schools are very poorly accounted for—very little information is available in the public domain. The National report on schooling in Australia has some descriptive accounts: classrooms for primary and secondary schools, home economics and science. These general descriptions suggest priorities were for extensions or curriculum based refurbishments, but there is no detail. The public—taxpayers—have no way of finding out. This government remains indifferent to this—or perhaps such information remains, as some other reports, hidden in DEST files. I understand that in a media release on
10 September the minister did say that it intends to provide more detailed reports to parliament. That is good, but let us see if it actually happens. If it does happen, that is good, but there is little else that is good about this bill. It will further drive a wedge between the public school system, for the majority, and the private system, for the elite. Labor, on the other hand, have a policy that will redress this imbalance. We will help public schools with their enormous need for capital, while at the same time not ignoring the private sector. Labor will help all Australian schoolchildren, not just those who can afford to buy their education.

Senator NETTLE (New South Wales) (7.45 p.m.)—I rise to speak on the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003, which I am sure the government considers to be a mechanical bill that simply delivers the next tranche in funding for capital grants to non-government schools as well as additional funding for literacy and numeracy programs and projects in schools. Aside from the funding for the literacy and numeracy programs, this bill is the latest manifestation of the government’s deliberate agenda to promote private education. It is an agenda that undermines the ability of the public school system to do its job.

The big debate on these issues will come next year when the new round of ongoing per capita funding to government and non-governments schools is up for review by the Commonwealth. It is extremely important that the issues about the funding of our school sectors are understood and debated in the community, particularly in the lead-up to an election year. The Greens will certainly make the funding of our public schools a priority.

Today is an opportunity to put the Greens’ views on the public record and to challenge the government to meet these concerns in the interests of the country’s long-term prosperity. This bill delivers another $48 billion in capital grants to the non-government school sector. This represents 30 per cent of the total Commonwealth outlay on capital grants to all schools. As the ratio of government school students to non-government school students is approximately 70 to 30, government senators will argue that this funding proposal is fair. The rhetoric from those who champion the private sector relies on this basic and misleading calculus. The 70 to 30 divide does not tell the whole story. It does not tell us that, on average, 57 per cent of the cost of private schooling comes from state and federal tax dollars. It does not tell us that, despite this public investment, less than 12 per cent of Indigenous children attend non-government schools, less than 20 per cent of children with special needs attend private schools and less than half as many students from remote locations attend private schools. These are some of the student groups who need the most intensive teaching, special educational and logistical arrangements and, as a result, much higher per head resources invested in their education.

These are the facts that those who champion private school education tend to ignore. The government argues that individuals in this country pay taxes that, in part, pay for the education of their own children. The government says it has a responsibility to ensure that these taxes are fairly spent for this purpose and that it is not the business of the Commonwealth to discriminate against those individuals who have made the choice to send their kids to a private school by denying those kids the benefits of the taxes their parents may have paid. The Australian community is not just a collection of individuals who make choices in the pursuit of their own interests. People often make collective decisions for the benefit of the whole
of the community. That means that we pay our taxes not just for the education of our own children but for the provision of a public education system that ensures that anyone’s child can be well educated. When we pay for such a system, we rightly expect that public schools can provide excellent standards, that students graduating from public schools will be amongst the best prepared to contribute to society and that the system will deliver these goals without having to continually go cap in hand to parents to raise funds. Currently our public school system, despite the unfair competition from the publicly subsidised private school system, is doing remarkably well. The Greens take the opportunity of this debate this evening to congratulate public school teachers in Australia, who have worked through significant challenges in terms of resources and conditions to deliver some of the best literacy and numeracy results in the OECD.

The Commonwealth ought to join us in recognising this fact and act to ensure that these results, along with many other good outcomes that public school teachers deliver across the curricula, continue into the future. It is this kind of collective social effort, which generates obvious societal benefits, that is the behaviour of a responsible community. In reality it is the basis of all social democracies, like Australia, and the reason why we have a society that is comparatively harmonious, but this sense of harmony is under threat as a direct result of the divisive policies of this government in the area of schools funding.

The introduction of the SES funding model for schools is one of the more insidiously divisive pieces of legislation that this government has enacted. The legislation for the SES funding model was introduced in 2000 to reward private schools with public money if they could recruit students from areas of low socioeconomic status. The system does not bother to find out whether those individuals are from a low socioeconomic background; they just need to live in an area where others are from a low socioeconomic background. Just to remind the Senate of the devastating effects that such a system has had on our schools funding system, here are a couple of examples. The Sydney Morning Herald reported in May this year that Trinity Grammar School, at Summer Hill, accepted $2.42 million from the Commonwealth in 2001. Next year that figure will increase to $5.48 million, a jump of 144 per cent over four years. The Kings School, in North Parramatta, will find itself $676,000 better off next year when the Commonwealth hands over $3.23 million. Between 2001 and 2004, its funding will have increased by 124 per cent. For senators who might not know, Trinity Grammar and Kings School are two of the richest schools in my home state of New South Wales. The Greens are not saying that people should not be able to send their children to these schools, but we do ask why ordinary taxpayers should have to subsidise them to do so. Why should scarce education dollars be spent buying a new set of gates for the Kings School, at a cost of tens of thousands of dollars for one set of gates, when there are numerous stories of public schools that are in need of repair, whose fabulous teaching staff are woefully underpaid and whose resources of computers, books and equipment are barely adequate?

What does it say about the priorities of this government when in New South Wales the state government, in order to improve the lot of public schools in the east of Sydney, developed a plan to sell off eight public schools to raise the $108 million they needed while the Commonwealth was pouring $3.5 billion into the private school sector during the same period? Surely the priority should be to get the public system to the highest level of excellence before money is diverted
to subsidise private institutions that do not even have the same accountability requirements as public schools for the taxpayers' dollars they receive, whose income from fees and assets far outstrips that enjoyed by any public institution and who do not do the job of educating those most in need of intensive educational requirements.

But the government does not share this view. All we need to do to convince ourselves of that fact is to look at the figures: Commonwealth funding to private schools increased by an average of $996 a student between 1999 and 2003. This represents more than seven times the increase for government schools. By 2007, government schools will be getting $828 a student and private schools will be getting $4,531 a student. The future of our nation depends on the way in which we educate ourselves. That choice is a collective one in which personal options have social and cultural impacts. The government’s project to deregulate schooling, to encourage private school enrolments and to encourage the establishment of new private schools is already having a divisive impact on our egalitarian culture, and it is set to get worse while these policies continue.

The Greens continue to call for a halt to these policies, and we urge action to address current inequities and to put our public school system on a sustainable footing. The changes that the Greens support are outlined in our second reading amendment, which I will now take this opportunity to move. I move the Greens’ second reading amendment:

At the end of the motion add:

“but the Senate condemns the Government’s divisive and elitist education policy and therefore demands that the Government:

(a) immediately cease all funding of the wealthiest private schools, that is, all schools that were formerly categorised as H1, H2 or H3 under the Education Resource Index as prescribed in the States Grants (Primary and Secondary Education Assistance) Act 2000;

(b) cap Commonwealth general recurrent funding to all other private schools receiving socio-economic status (SES) funding to their year 2000 levels;

(c) immediately abolish all future and existing establishment grants to private schools;

(d) re-direct all revenue saved from these measures into programs that assist public schools that serve communities with significant socio-economic disadvantage;

(e) work with the states and territories to ensure that education funding is sufficient to permit all public school teachers to receive a 25 per cent pay rise over the next 2 years and work towards raising teachers’ salaries to 150 per cent of average weekly earnings within 10 years; and

(f) ensures that employers in private schools and private school systems provide their teachers with the commensurate wage increases as proposed for the public sector”.

This manifesto is not about attacking private schools; it is about investing in public schools. It is about recognising the danger our public school system is in and acting to address it. This is a responsibility of the Commonwealth government, which it is currently failing. The Greens’ commitment to the welfare of our public schools is at the core of our belief in the pursuit of a socially and economically just society. As a result, increasing funding to our public school system has been a key policy area for all our political representatives. The Greens’ second reading amendment today reflects the work of my New South Wales colleague Lee Rhiannon MLC, who moved a private member’s bill in the New South Wales parliament that sought to redress the imbalance of the
Commonwealth funding model. Despite that bill not having been supported by the Labor government in New South Wales, the Greens are continuing to campaign for equitable funding for schools that recognises the pre-eminent role our public education sector plays in the sustainability of an egalitarian society.

Sadly, the Howard government does not seem to be committed to this goal; instead, the government is methodically undermining our public education system. In the schools sector, the introduction of the SES funding model has resulted in public money flowing into private schools; in the tertiary education sector, the government is proposing the same shift from public to private funding for our universities.

Michael Long, a researcher at Monash University, noted in a recent paper that by far the biggest barrier to participation in tertiary education for those from low SES backgrounds is their results at school. This government is starving the public school system, which overwhelmingly teaches those from low-income families, of funds at the same time as it is raising student fees for higher education, putting in place financial barriers to people from low socioeconomic backgrounds being able to access tertiary education. There is nothing egalitarian about such an approach to the lack of advantage that people from a low socioeconomic background face. The government’s approach is a recipe for a winners and losers society that sacrifices the benefits of the many for the good of a few.

The Greens look forward to the debate this bill foreshadows, to the opportunity to further expose the inequity of this government’s funding model for schools and to the opportunity to turn around the funnel that pours public money into the private school sector. I urge the Senate to support the Greens’ second reading amendment.

Senator ALLISON (Victoria) (7.58 p.m.)—I rise to speak to the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003, which proposes to provide additional funding through indexation for capital grants for non-government schools for the years 2004 to 2007, and additional funding for school literacy and numeracy programs and projects for the years 2003 and 2004.

The federal government contributes, on average, 32 per cent of the funding of capital works in government schools. In New South Wales, for instance, from 2004 to 2007 government schools will receive capital grants funding of $222.3 million each year, per schedule 3 of the current act, compared with $87.4 million per year for non-government schools, which is roughly in line with the relative proportions of students in government and non-government schools.

Whilst this may appear to be fair, the reality on the ground is that it makes not a scrap of difference to the huge difference in resources that are available to non-government and government schools. The states are partly to blame for this, but of course the federal government, through its SES funding model, has presided over a massive increase in funding to non-government schools, much of it going to schools that can in no respect be regarded as in need. Just a few weeks ago, fee increases at roughly twice the inflation rate were announced for Victorian independent schools. Scotch College, Caulfield Grammar and Haileybury will charge $16,000 for year 12 students—and, of course, since 2001 Haileybury has enjoyed more than $3.6 million in increases due to the SES model funding, and this is on top of what it received prior to 2001 and what the state government also contributes. With the
average amount of per capita funding to government school students, all up, being between $8,000 and $9,000 per student, it is very clear that some schools have two and three times the amount to spend on each student as those which are in the government sector. I think there is no greater demonstration of the wealth of resources than the state of a school’s infrastructure. I make regular visits to schools, both government and non-government, and the differences both within and between sectors are very obvious.

The Democrats believe that the majority of government schools are critically underresourced and are desperately in need of more funding. We conducted a survey of year 11 students which showed that 45.1 per cent of students who participated in the survey were in schools that had no assembly hall, 58.6 per cent had no gymnasium, 44 per cent had no drama stage and 49.5 per cent had no tennis court—just to name a few of the facilities that most schools would regard as being pretty basic. I have been to schools that have relied on parents to construct indoor sports centres and that have had to borrow money that can only be paid off by subsequent generations of children going through the school and only if the facility is rented out in some way to earn more money. Whilst this is not, in and of itself, a bad thing, it is my understanding that it is rarely the case that wealthy schools have to do that and that most schools are simply doing without rather than taking that chance.

The reliance of schools on so-called portable classrooms ought, I think, to be a matter of national shame. Back in July this year, the report of the inquiry into public education by the University of New South Wales demonstrated the seriously substandard condition of our schools. Professor Vinson, who conducted the inquiry, said that at least 10 years of the improved level of funding—that is, the New South Wales budget of $1.1 billion over four years—would be required to bring schools in that state to an acceptable standard. The report says:

So far as the majority of teachers, students, and parents are concerned, the maintenance and refurbishment of the education estate has been neglected and fitfully managed for such an extended period that the tag “povo”—which is a student term to mean poverty stricken—aptly describes its standing relative to the private sector. The direct observation of conditions in more than 140 schools and the numerous submissions received on this aspect of school life ... have left the Inquiry in no doubt about the frequently sub-standard conditions in which teaching and learning are being attempted.

The report says this is despite ‘the international recognition of the need for school buildings and amenities to be of a good standard and supportive of contemporary teaching practices.’ On the subject of demountable classrooms, the report says:

Demountables have been the subject of incessant criticism throughout the Inquiry. They are criticised on several grounds: they develop gaps and leaks; in the absence of air conditioning they are too hot; they lack amenities such as wet areas; their insubstantial character detracts from the appearance and confirmed identity of a school; and their alleged ‘temporary’ status is used as a reason for not providing facilities such as covered walkways. Teachers at one high school summed up their dissatisfaction by saying that

“We have been living in a village of demountables since the 1970s.”

All of the classes in one school in Northern New South Wales have been in demountables since 1995—that is all of the classes—with the first demountable temporarily installed in 1976. Inquiry staff have inspected the school and seen that there are no covered walkways to any of the demountables or to the administration office and staff room located within the original heritage
school building. The authorities say that this school will be rebuilt within two years.

The subject of appropriate teaching spaces is touched on in this report:

During school visits, classroom teachers have often pointed out that the spaces in which they teach severely restrict the flexibility of their teaching practices. They say that they need ‘breakout’ spaces so that groups of students can work on computers or at other tasks before pooling the benefits of their learning. The Inquiry has seldom found spaces available in the schools to support this kind of progressive pedagogy. Sometimes the lack of space has been of a more drastic kind, as reported in a submission from a Sydney public school:

Because our school has extra staff, that is, seven community language and six ESL teachers, appropriate teaching space which ensures that all children have an equal opportunity to learn, is essential. As a very old school with 960 students—

96 per cent of whom are from a non-English speaking background—

these teaching spaces are at a minimum. Teachers often work with groups on the floor, in very small spaces or in corridors.

The report says:

Both during visits to schools and in the submissions received, the Inquiry has constantly been reminded of the inadequacies of some of the schools’ most basic amenities, especially their toilets. At the insistence of staff, inspections have been made of ill-maintained and under-supplied staff toilets, especially in older schools. A Western Sydney school has written of blocked drains resulting in a build up of water, sewerage problems and pungent odours. A principal of a metropolitan Sydney high school has commented on “...struggling to find $2000 to pay for yet another eruption of a 70 year old sewer system”. A Sydney primary school P&C has described the age of their school facilities: “they are so old that they have chains and kids have to climb up onto the toilets to flush them.”

I could probably spend the next hour or so going through other parts of the report that describe the very serious problems that are associated with schools in New South Wales. As someone who visits schools regularly in all states, particularly in my own state of Victoria, I know that this is typical; it is not some unusual situation for New South Wales.

The Vinson report says we need a publicly available indicator of need. Instead, we have capital funding that, as far as I can see, is decided on the basis of whether the school can raise dollar for dollar funding, the quality of the submission, and the drive on the part of the principal and parent group sometimes. A lot of it is dependent on luck in terms of donations from within the community.

This was the experience of the Senate education committee in its inquiry into Indigenous education. If a school, particularly a school with Indigenous students in the Northern Territory, was not blessed with lots of parent support and assistance and had trouble writing grant applications, it simply missed out on the funding. There was no audit done that would prioritise schools according to need, and many of the schools we visited were seriously in need. One school that comes to mind had sufficient power to light only some rooms at a time and to run airconditioning for only one space at a time. This was in Central Australia where the extremes of temperature were extraordinary. It is little wonder that students are reluctant to attend these schools and little wonder that many of the schools have trouble attracting teachers.

What is missing nationwide is any serious kind of audit that would demonstrate where there is need and any real understanding of the standards to which we are working, or should be working, or the importance of the built environment to the learning process. The Vinson report points to the OECD Program on Educational Building which speci-
fies a range of broad criteria by which the merits of newly designed and substantially refurbished schools can be assessed. According to this program, the designs must have an eye to meeting the identifiable needs of today as well as the uncertain needs of the future. For example, structures that incorporate non load-bearing partitions and ample provision for mechanical, electrical and electronic services will be more flexible than traditional forms of construction. Schools should provide an environment that will support and enhance the learning process, encourage innovation and be a tool for learning. Well-designed educational facilities should be a resource to support lifelong education and recreation for all.

The report encourages school administrators to consider a number of points. I will not go through all of them because there is not time, but I will mention some. They include the importance of a strategically located work space that facilitates cross-disciplinary interaction; designing a teacher staffroom that incorporates spaces for reflection, research and professional collaboration across and within grade levels; and balancing the needs of privacy and collaboration. Designing individual spaces in close proximity to the main workroom or staffroom area promotes easier interaction among staff. The staffroom at the last school I visited, which was a couple of weeks ago—in fact, the school where I did my primary learning— is like any other staffroom I have seen with desks for teachers that are hardly bigger than the desk that I have in front of me, and there is certainly no privacy for teachers to make phone calls or to even concentrate on their work.

The OECD program recommends that space needs to accommodate the different styles of learning and teaching in schools. There is a need for different types of classroom spaces. Instead of the traditional notion of rows of desks facing a teacher, a classroom should have enough space for numerous activities and to be flexible. Chairs are very important. Teachers’ desks should have ample lockable storage space and allow for a computer and modem connection.

It has been found that students perform better in classrooms that have more natural lighting—their attendance is better and their emotional state is more positive. The quality of sound in a classroom affects the performance of students, especially younger ones and those not proficient in English. So acoustics are critically important. With computers in widespread use, having the right kinds of desks and chairs is becoming terribly important. There are still schools around that have very basic plastic chairs. I have yet to see any evidence that these are good for the posture of students in the long term or even while they are still at school. The program suggests that students and staff perform better when the work area is clean and properly maintained.

Safety is an issue. Unless teachers and students feel safe in a school, they will not be able to focus on learning. Entrances should be welcoming but still serve as a control point. There should be good lighting and clear sight lines et cetera. Some of these points will be obvious but, believe me, others are not being adhered to in schools. The report urges the quantification of the backlog of capital works that are needed to deal with unmet need and the planning and budgetary allocations required to achieve that.

As I said earlier, other parts of the bill relate to funds for literacy and numeracy. The Strategic Assistance for Improving Student Outcomes program, or SAISO, operating under the States Grants Act, aims to improve the learning outcomes of educationally disadvantaged students, particularly in literacy and numeracy, and the educational participa-
tion and outcomes of students with disabilities. The bill makes additional provision for literacy and numeracy programs, including an extra $33.79 million for SAISO for 2004 and additional funding of $3.64 million for the National Literacy and Numeracy Strategies and Projects Program for 2003 and $7.41 million for 2004.

Nobody would argue against increases in funding for literacy and numeracy programs. It is my perception that considerable gains have been made in schools in recent years largely through a better understanding of effective teaching methods in this area but also through better resources being made available. The fact remains that testing students in year 3 and year 5 has used up huge amounts of literacy and numeracy money, and I think there has been very little benefit.

The National report on schooling in Australia suggests that we may not be catering as well as we should for lower achieving students. The education committee inquiry into students with disability found that the failure to recognise learning disability for instance in a funding sense, and the failure of schools to diagnose students with learning disability—or to teach in a way that would give them more access to and success in learning—were still very major problems.

Teachers know very well which students do not learn at the same rate as their peers with or without those tests. What they need is greater flexibility in meeting the needs of these students, and that can sometimes mean much smaller classes. I think that social justice demands that students with disabilities—whether they be learning disabilities or other disabilities—have equal access to education. Again, the Senate inquiry report found that, despite literacy and numeracy programs, there were still significant problems for disabled students:

… children and their parents are not being given the support that they need in the education systems.

Commonwealth funding is not:

… being effectively targeted at deficiencies in the provision of education programs for students with disabilities, at school and system levels, and in post-secondary education.

Literacy and numeracy programs provided as a form of assistance were:

… in reality increasing competition from a growing number of students identified as having special education needs … seriously stretching finite resources.

Of course, they are only finite because governments determine that there be a cap on them. The inquiry found:

… unambiguous evidence of under-resourcing of programs aimed at bringing students with disabilities into the mainstream of learning; as well as funding inconsistencies between states. More significantly, there is evidence that under-resourcing reflects the wider problem of diminishing resources for the education of all people.

There is a funding equity issue. The figures in the 2002 states grants report show that non-government schools receive almost $500 per student in funding more than government schools. The government argues that it is up to the states to fund for disabilities, so this area joins the rest of them in the game of buck passing between states and Commonwealth. The Democrats argue that there needs to be more accountability and transparency in the system so that we know where the money goes and that it is used according to need and in accordance with what is agreed. The inquiry said:

What the committee does require is evidence that funds are expended in a way that is relevant and appropriate to the educational task that needs to be performed. For this reason, the committee believes that the Commonwealth should require state and territory education departments as well as non-government systems and schools to develop reporting processes that ensure accountabil-
ity for Commonwealth funds expended at the school level.

It is disappointing that this legislation does not pick up on those recommendations. It is disappointing that we are not seeing an increased effort in funding for capital works for government schools. The Democrats urge the government to support our amendment, which would at least see a proper audit conducted in all states that would reveal the extent of need and the extent of investment required for a more equitable education system.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (8.17 p.m.)—The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003 confirms the government’s commitment to school education and to improving the outcomes for students. This bill continues a commitment to the Capital Grants Program, which supports non-government schools. This amendment will maintain capital funding for non-government schools in real terms at the 2003 level. It will appropriate approximately $48.3 million for capital funding in non-government schools over the four years to 2007. I point out that, without this amendment, the level of capital funding for non-government schools for the years 2004-07 would fall more than $11.7 million each year below the 2003 funding level, and that would adversely affect schools that serve the most educationally disadvantaged students.

Both Senator Crossin and Senator Allison have asked for some more detail of what the government has done with regard to funding. I would simply point them to the States Grants (Primary and Secondary Education Assistance) Act 2000 report of financial assistance granted to each state in respect of 2002. It gives a list of what is given to government schools, independent schools block grant authorities, the Catholic Block Grant Authority and so on for each of the sectors, so some detail is provided in that.

In addition, I heard Senator Carr’s speech this afternoon, and even Senator Carr pointed out that the states are also responsible for funding government schools. I point out that the Commonwealth provides nearly $324 million each year for capital works in government and non-government schools. Of this amount, $233 million is provided for government schools and $91 million for non-government schools. State government and non-government school authorities have primary responsibility for provision of school facilities, and this Commonwealth contribution is supplementary. In the government sector, over 230 major capital works projects are funded annually, as well as a significant number of minor projects. In the non-government sector, more than 260 projects are funded each year—government sector projects tend to be larger.

In the 2001-04 quadrennium, schools will receive over $1.3 billion in Commonwealth funding under the Capital Grants Program. Of this funding, almost $950 million will go to government schools and over $373 million to non-government schools. This means that over 72 per cent of capital funding will go to government schools—a sector with 68 per cent of enrolments. As well, Commonwealth per capita funding for government school capital works is approximately $103 per student in 2003. That is higher than for non-government schools: approximately $88 per student in 2003.

I return to the provisions of the bill. Getting onto its positive aspects, the bill also provides additional funding of $54.3 million to be provided through the Strategic Assistance for Improving Student Outcomes Program and the National Literacy and Numeracy Strategies and Projects Program over
2003-04 to improve the learning outcomes of educationally disadvantaged students, particularly in the key areas of literacy and numeracy. This means that our schoolchildren are being given every opportunity to develop literacy and numeracy skills at an early age. There are nationally agreed benchmark standards for years 3, 5 and 7, which ensure that all children attain the levels of literacy and numeracy they need to make progress in their schooling and to participate effectively in our society. There is comprehensive information on this in the National report on schooling in Australia.

The Australian government has also led the way in establishing national minimum standards for literacy and numeracy and for those results to be reported back to parents. Parents want to know, and have the right to know, that their children can read, write, count and communicate to acceptable minimum standards. I am pleased to say that, at the Ministerial Council on Education, Employment, Training and Youth Affairs in Perth in July, ministers agreed that the results of a child’s year 3 or year 5 literacy and numeracy tests would be reported to parents against the national benchmarks. This agreement signals that from 2004 all parents across the country will begin to receive reports of their children’s literacy and numeracy achievements against national benchmarks. Only New South Wales, I regret to say, has not publicly stated that it will do this.

If the opposition choose not to pass this legislation in the Senate, they will not only stop additional funding for non-government school capital works of $41.84 million over program years 2004-07 but also stop additional funding under the Strategic Assistance for Improving Student Outcomes program of $33.79 million for 2004 and additional funding under the National Literacy and Numeracy Strategy and Projects Program of $3.458 million for 2003 and $7.414 million for 2004.

Australian government investment in education represents a major investment in the future of our society. Through increased financial assistance to schools, particularly schools serving the neediest communities, we seek improved outcomes from schools and a brighter future for Australian students. Through this funding, Australia will be in a better position to make major contributions to our global future and to continue our tradition of innovation and technical skill. This funding commitment highlights the national leadership shown by the Australian government in demanding the best for all our students. It is a substantial commitment to education, and it strengthens the government’s role in working towards a nationally consistent, high-quality education system. Quality education is vital to Australia’s future, and we are committed to continuing to provide substantial levels of funding to produce real results for all students. I commend the bill to the Senate.

Senator CARR (Victoria) (8.25 p.m.)—I seek leave to explain the opposition’s attitude towards the two second reading amendments which were distributed after I spoke on the second reading.

Leave granted.

Senator CARR—I will be brief. In regard to the first second reading amendment moved by Senator Nettle, I indicate that the Labor Party has on many occasions in this place and outside taken the view that the regime of funding that this government has imposed through this States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003 is deeply divisive, elitist and inequitable. However, the amendment proposed by the Australian Greens goes to the heart of the major states grants bills which will be considered next year, follow-
The review of the funding scheme as it has operated to date. Though there is much we could say in regard to the merits of any specific proposals being put forward in this amendment, it would be pre-emptive to consider these proposals at this time and they would be better considered in the context of the 2004 bill. Likewise, we agree with the Greens that teachers are underpaid and deserve better, but wage issues are not the subject of this bill. It is not about recurrent funding, which is the mechanism by which wages are actually paid. Labor will not be supporting the Greens’ second reading amendment.

In regard to the Democrats’ second reading amendment, Labor believe that there is a need to have a good look at the state of public school infrastructure in this country. We have said when addressing the particulars of the bill before the chamber that we see private schools getting between two and four times the amount per head that is spent on public education infrastructure as a result of the Commonwealth government’s contributions. Labor believe that students should be properly housed to be able to work to the very best of their potential, unhindered by crumbling buildings and inadequate resources. If these important issues are to be addressed, an audit of the current situation would be a useful tool, and Labor will be supporting the Democrat second reading amendment.

Question negatived.

Senator ALLISON (Victoria) (8.27 p.m.)—

At the end of the motion, add:

“but the Senate calls on the Government to fund an audit in each state of the conditions of Government schools’ infrastructure and develop national educational infrastructure standards along with timelines and funding to deliver those standards.”

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CARR (Victoria) (8.28 p.m.)—

by leave—I move opposition amendments (1) and (2) on sheet 3220:

(1) Schedule 1, page 3 (before line 6), before item 1, insert:

1A After subsection 73(1)

Insert:

(1A) The Minister may not make a determination authorising the payment of financial assistance under subsection (1) unless evidence has been provided that schools or student hostels proposed to receive assistance meet criteria of educational and financial need specified for the purposes of this subsection.

(2) Schedule 1, page 3 (before line 6), before item 1, insert:

1B At the end of section 116

Add:

(3) The report under paragraph (2)(b) must include detailed information for each State and Territory on the capital projects supported by Commonwealth capital grants to each school, in accordance with the following table:
### Capital projects in Non-government schools

<table>
<thead>
<tr>
<th>Item</th>
<th>School or System</th>
<th>Total value of project</th>
<th>Total grant</th>
<th>Expenditure in current year</th>
<th>Project description</th>
<th>Description of evidence that project meets educational and financial needs criteria</th>
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</tbody>
</table>

**Senator CARR**—These amendments put into practice the principles of transparency and integrity into Commonwealth funding for schools, which I have outlined in the second reading debate of this bill. The amendments relate only to Commonwealth funding of capital projects in non-government schools. The opposition accept the accountability principles relating to all Commonwealth programs for schools in both the government and non-government sectors, but this bill includes a range of changes in the capital funding for schools in the non-government sector only, and we have limited our amendments to that sector at this particular time. Labor will consider further changes to accountability arrangements for all programs and for all schooling systems in the context of the legislation for the next quadrennium.

The amendments have been discussed with the major interest groups, including the national non-government schools organisations. These discussions have led to some changes from earlier drafts, but there has been support for these amendments from various organisations. For example, the Chief Executive Officer of the National Catholic Education Commission has made it clear that ‘the commission is supportive of measures that ensure proper accountability for public expenditure’. The Executive Director of the Independent Schools Council of Australia has also stated:

I can assure you that the independent schools sector supports timely and transparent reporting of funding decisions made by the Commonwealth under the capital grants program.

The Australian Associations of Christian Schools has provided similar advice. The opposition amendments are consistent with these principles.

Turning to the specific amendments, amendment (1) provides for an explicit requirement in the legislation for the Commonwealth capital grants for non-government schools or student hostels to be conditional on the proposals meeting criteria for educational and financial need. This is the point in the new provision in 1A to be inserted after subsection 73(1) in the principal act. Such criteria are currently only included in program guidelines, including separate guidelines for block grant authorities. The amendment would bring the needs principle more formally into the content of
The amendment is not directed at changing the relationship between the current block grant authorities and the Minister for Education, Science and Training. Those authorities would continue to advise the minister on projects to be funded against the program’s needs based objectives.

The amendments relate to the public reporting of decisions, not to the approval processes. The amendment places the needs principle for Commonwealth capital funding of non-government schools in the legislation. This would provide a more secure and transparent basis for the decisions of the block grant authorities than simply including them in program guidelines. The amendment would not require any further administrative changes. It would not add any restrictions or inefficiencies to the operation of the block grant authorities. The minister would not need to duplicate the approval processes. We expect, however, that the normal audit processes would apply to protect the integrity of program administration against objectives that would be clearly set out in the legislation.

Amendment (2) sets out the information to be included in annual reports to parliament under the capital program for non-government schools. Since 1997 reporting under section 116 of the principal act has been cursory, to say the least. Until last week, when the report was tabled, reports have typically included a half-page overview of the capital grants projects, and no information on the kinds of projects supported or the way that these meet the program’s objectives was included. The format for these reports has provided only a one-line figure of the total capital expenditure on Catholic and independent schools for each state and territory and for Australia in aggregate, and that clearly is not satisfactory.

I note that the report of the minister’s department on financial assistance grants for the year 2002 has already been before the House of Representatives, and I trust that these matters will be debated there as well. I commend the minister for improving the level of accountability in the current reports. The new format is in fact an improvement on that of the previous reports, but it is not in itself sufficient. We need to go much further and we need to take the principle of public accountability to the next level.

Labor’s amendment to section 116 would provide information on the Commonwealth capital grants assistance to each non-government school, including the total value of each project, a brief description of the project and the way it meets educational and financial needs criteria. The amendment in effect provides a template for reporting on the Commonwealth capital assistance to non-government schools. The amendment goes beyond the format approved in the 2002 report. As I say, it will provide additional levels of accountability. It is important to have the reporting format in the act itself and not be just subject to the ministerial whims of individual office holders.

Taken together, I believe the opposition amendments represent sound public policy administration and confirm the intent of the capital grants program to support schools and students with the greatest need. They will also go some way to increasing public confidence in the operation of the program more generally. I commend both amendments to the chamber.
especially in the government sector. There
are huge discrepancies in resource levels
within those sectors which should be ad-
dressed. I think every education bill that we
deal with in this place ought to be on the ba-
sis of need. After all, that is what the SES
funding model was supposed to be based on.
It turned out not to be, but that is what it was
supposed to be based on. We also need to
improve levels of accountability in this
place. We are pleased to support both of
those amendments.

Senator TROETH (Victoria—
Parliamentary Secretary to the Minister for
Agriculture, Fisheries and Forestry) (8.35
p.m.)—These amendments proposed by the
opposition will not be supported by the gov-
ernment. The capital grants program operates
at arms-length from the government. The
main effect of the amendments is to remove
this arms-length approach to the allocation of
capital grants to non-government schools, an
approach that has operated effectively for
both government and non-government
schools capital funding since 1988 and is
supported by education authorities. Under
the current arrangements, expert block grant
authorities, made up of representatives from
their respective education sectors, assess all
applications for capital funding from non-
government schools against detailed minis-
terially approved guidelines and provide rec-
ommendations to the government on projects
in schools to be funded.

In making their recommendations, the
BGAs are already required to take into ac-
count both the financial needs of individual
schools and the relative educational disad-
vantage of the student population of each
school, with the more disadvantaged being
given priority over the less disadvantaged. In
assessing financial need, the BGAs are re-
quired to use a methodology that is primarily
quantitative and which will enable them to
justify their recommendations to an inde-
pendent appeal body or at a departmental
audit. For the educationally disadvantaged,
the block grant authorities must use an as-
essment methodology, which may be a
combination of generally applied indices and
applicant-specific information, which is ap-
plied in a consistent way and which is sup-
ported by evidence. A similar method for the
allocation of capital grants to government
schools applies—again, a body at arms-
length to the minister; in this case the state
and territory education departments assess
and make funding recommendations to the
minister.

The opposition’s amendment would re-
move this arms-length approach to program
management for non-government schools.
Moreover, it would put considerably more
discretionary power in the hands of the fed-
eral minister. It would require the govern-
ment, at a national level and at great ex-
pense, to assess and prioritise individual pro-
jects to enable the minister to make a deter-
mination specifying educational and finan-
cial need. The costs of this change would
effectively divert funds away from building
classrooms for educationally disadvantaged
students.

The proposal by the opposition would ap-
ppear to add nothing to achieving the aims of
the program and is likely to add significantly
to the complexity of administering the pro-
gram. There are no similar requirements for
other schools programs legislated under the
act, and I note that the amendment does not
propose a similar requirement for the alloca-
tion of capital grants in the government
school sector. It was in 1988 that the Hawke
Labor government, to its credit, specifically
introduced a system whereby assessments
would be made at arm’s length from the gov-
ernment to avoid any real or perceived po-
litical interference. It was previously done
centrally by the Australian government de-
partment.
The Australian government is firmly committed to open and transparent processes for the allocation of capital grants, and the non-government school authorities are equally committed to this. There has already been an announcement that the annual report to parliament required under the States Grants Act 2000 will include details of expenditure for capital projects at the individual school level and location. This year’s report was tabled on 26 November. There are already substantial mechanisms in place to ensure proper accountability. For example, block grant authorities are required to provide financial accountability details of expenditure by project annually, similar to that provided by state governments for government schools. In addition, BGAs are regularly audited by the government on their operations and management of the capital grants program. The reporting requirement proposed by the opposition amendment applies only to the non-government sector, which is inequitable.

This amendment is not about correcting any perceived problems in the capital grants program. Rather, it is about Labor’s ideological stand against non-government schools. It is telling that the amendment does not seek to impose similar obligations on Australian government capital grants for government schools, despite the bulk of capital funds going to these schools. Further, the non-government school sector has indicated to the government that they are against the amendment. Bill Daniels, the Executive Director of the Independent Schools Council of Australia, has written to Ms Macklin, the opposition spokesperson, arguing strongly against the amendment. In this letter, which was copied to Dr Nelson, Mr Daniels wrote:

The more intrusive approval and reporting envisaged in the amendment will almost certainly have the effect of changing the balance of responsibilities between the block grant authorities and the minister by diminishing the relevance of the assessment work undertaken by authorities. Clearly this is undesirable.

The National Catholic Education Commission, representing almost 20 per cent of school students, has also written to Minister Nelson, saying:

We believe the amendment may limit the ability of the minister, of whatever political party, to set government priorities for the capital grants program. The amendment may lead to the duplication of assessment of applications for capital funding with the Commonwealth having to double check the decision of BGAs as the minister may require the department to advise him or her as to the correctness of the block grant authority assessments. This may lead to inefficiency and uncertainty.

I have already said that the bill before the chamber seeks to continue capital funding of $10 million per annum to non-government schools which has been in place since 1996. It is a small part of a total funding program of some $92 million per annum, which provides very significant benefits to the large numbers of children who attend Catholic and independent schools throughout Australia. The opposition is trying to use this small part of the program to introduce detailed administrative requirements which add nothing to the outcomes of the program, which call into question the professional judgment of the block grant authorities and which fly in the face of the current accepted and successful administrative arrangements which have been in place for many years. The current program arrangements provide an efficient and effective means of delivering capital grants primarily aimed at educationally disadvantaged schools throughout Australia. Program administration for both sectors is deliberately and appropriately at arm’s length to the government, a system which was introduced by your party, Senator Carr, in 1988 and supported by education authorities. This
should be maintained. The amendments should be rejected.

Senator CARR (Victoria) (8.43 p.m.)—The opposition’s amendments go to improving accountability. The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry has referred to a letter from Mr Daniels which was in response to an earlier draft of the proposed amendments. The amendments were redrafted after having taken into account the response from Mr Daniels. As a consequence, they are consistent with the principles outlined by Mr Daniels. In regard to the question of whether or not we are biased towards public education, I believe we have an obligation to ensure excellence in public education, and that goes to the question of funding. This is a government that is obsessed with promoting division and ensuring that a disproportionate share of moneys goes to a small number of elite educational institutions. You know the argument only too well, Senator. You would have heard me on this theme for some time. The question, however, of the reporting requirements for the public education system does not arise in the context of this bill, because this bill is about the funding of the private system. I would have thought your advisers would have pointed that out to you. So I am surprised that you should raise that matter.

As to the interpretation of the guidelines, I ask specifically: when were the guidelines changed in regard to the expenditure of capital funds for recurrent items? As I understand it, that is the proposition as outlined in the current report. When was money for travel, for loose furniture and for fees to be taken out of the capital budget? On what authority was that done?

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (8.45 p.m.)—I would like to point out to Senator Carr in the first instance that it is his party that has continually promoted division on this subject. As Senator Carr said, we have argued about this over many years; but, as Senator Crossin pointed out in her earlier remarks, it is my government that promotes choice in the education sector. It is the Labor Party that constantly promotes division and class war on this topic. This government is about providing quality education to the children of Australia, and that is the intent of this legislation.

Can I also say that the remarks of Mr Daniels that I quoted were contained in a letter of 27 November 2003 addressed to the Hon. Brendan Nelson. The letter and the remarks that Senator Carr was referring to are perhaps from an earlier letter. The letter I have in front of me indubitably states that Mr Daniels, and presumably his organisation, appreciates the support of the government for this legislation. To quote Mr Daniels again from this letter, dated 27 November:

... I confirm that in our view the amendments proposed by Ms Macklin are unnecessary.

I am happy to table that letter.

Question put:

That the amendments (Senator Carr’s) be agreed to.

The committee divided. [8.51 p.m.]

(The Chairman—Senator J.J. Hogg)

| Ayes | 32 |
| Noes | 31 |
| Majority | 1 |

AYES

Allison, L.F.  
Brown, B.J.  
Campbell, G.  
Cherry, J.C.  
Conroy, S.M.  
Crossin, P.M.  
Faulkner, J.P.  
Bartlett, A.J.J.  
Buckland, G. *  
Carr, K.J.  
Collins, J.M.A.  
Cook, P.F.S.  
Evans, C.V.  
Forshaw, M.G.  

CHAMBER
Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (8.55 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

TRADE PRACTICES 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 CONROY (Victoria) (8.56 p.m.)—I seek leave to incorporate my speech in the second reading debate on the Trade Practices Legislation Amendment Bill 2003.

Leave granted.

The speech read as follows—

I rise to speak on the Trade Practices Amendment Bill 2003.

Labor welcomes the opportunity to debate this legislation because it gives the Senate the opportunity to examine a number of areas where the government needs to do more strengthen competition law in the interests of consumers.

The Bill contains two sets of amendments to the Trade Practices Act.

The first set concerns Part IIIA of the TPA, which deals with access regimes.

These amendments arise out of the High Court’s decision in the Hughes Case in May 2000.

Part IIIA was introduced into the TPA in 1995 following the recommendations of the Hilmer review of national competition policy.

It establishes a regime to promote competition by providing new entrants with a way of obtaining access to the services of facilities of national significance such as for example, electricity grids or gas pipelines.

The ACCC plays an important role under Part IIIA.

It arbitrates disputes over access and assesses the adequacy of undertakings by owners and operators of essential facilities.

The Australian Competition Tribunal hears applications for review of certain decisions made by the Commission in access matters.

At present, Part IIIA provides that the ACCC and the Australian Competition Tribunal may perform functions and powers conferred on them by State
or Territory legislation that establishes an access regime.

An example of State legislation establishing an access regime is the Gas Pipelines Access (Victoria) Act 1998.

Under that Act, the ACCC and the Competition Tribunal are given responsibilities in relation access regimes established by State law.

The constitutional validity of co-operative arrangements of this nature was thrown into doubt by the decision of the High Court in The Queen v Hughes in 2000.

While that case was concerned with the former corporations law, the Court’s reasoning cast doubt over a number of other co-operative schemes established by the Commonwealth and the States to deal with issues beyond the exclusive legislative competence of either tier of Government.

The key issue in the Hughes case was whether Commonwealth agencies like ASIC and the ACCC can perform functions conferred by State law.

The High Court suggested that the Commonwealth might need to impose a duty on its authorities or officers to perform functions or exercise powers conferred by State law.

Significantly, the Court also indicated that the Commonwealth might be unable to impose these duties unless it could have imposed the functions by means of its own legislative powers.

Schedule 1 of the Bill inserts provisions to deal with the implications of the Hughes case in the context of access regimes.

In summary, it states that the TPA does not impose a duty on the ACCC or the Australian Competition Tribunal if State/Territory power is sufficient to do so.

In such a case the Commonwealth will simply consent to its officers performing the functions conferred.

However if State power is not sufficient to impose a duty but the Commonwealth can, then the TPA imposes the duty.

Labor will support these amendments but we do note that they do not address the issue at the heart of the Hughes case—namely that for a co-operative scheme to be effective it may be necessary for the Commonwealth to impose a duty on its officers to perform functions under State law.

The High Court suggested in Hughes that there might be cases where the Commonwealth does not have the power to impose such duties.

The Government sought a reference of power from the States to overcome the problems of the Hughes case for corporate law.

However it has been incredibly complacent about the impact of the decision on other co-operative schemes.

In his judgement, Justice Kirby noted that the court’s ruling had implications for at least 20 other schemes.

One of those schemes is the competition code, which extends the restrictive trade practices provisions of the Trade Practices Act to cover unincorporated bodies such the professions.

Under the scheme all States passed legislation empowering the ACCC to enforce its legislation implementing the competition code.

Following Hughes, the Treasury has confirmed that there is doubt about the ability of the ACCC to bring prosecutions against unincorporated bodies under the code.

For example, an attempt by the Commission to prosecute a group of professionals such as lawyers or architects involved in a price fixing arrangement could be subject to constitutional challenge.

The Government’s continuing failure to take action to remove all legal doubt surrounding co-operative schemes is unacceptable.

A Government committed to the consistent application of competition law on an economy wide basis would not allow this uncertainty to continue.

Labor repeats the call it made at the last election for a long-term solution to the problems raised by the Hughes decision.

Only a constitutional amendment can ensure that the Federal and State Governments are able to put in place joint legislation to address issues of na-
tional importance for which neither the level of government has complete responsibility.

Labor is committed to putting such a referendum to the people.

The second schedule of the Bill repeals the Prices Surveillance Act 1983 and essentially relocates the substance of those provisions into a new part in the Trade Practices Act.

These amendments flow from a review of Price Surveillance Act conducted by the Productivity Commission in 2001.

The Prices Surveillance Act provides for three forms of prices oversight.

Firstly Public inquiries—where the Minister directs the ACCC to undertake an inquiry into matters relating to the prices for the supply of goods and services and to report the results of the inquiry to the Minister.

The Act provides a maximum penalty of $55,000 for increasing prices during the inquiry period without the approval of the ACCC.

Secondly it provides for Price notification. Under these provisions the Minister declares that specified companies are to notify the ACCC of a proposed price increase for specified goods and services.

The ACCC is required to make a determination about the notified price increase within 21 days unless the company agrees to an extension.

While the ACCC’s determination is not enforceable, the Act does provide a penalty for increasing prices during the prescribed 21-day period without the approval of the ACCC.

The third form of prices oversight is monitoring and reporting—where the Minister may direct the ACCC to monitor the prices, costs and profits of companies and government authorities in relation to specified goods and services and to report the results of the monitoring to the Minister.

The Act does not provide the Government with a mechanism to prevent price increases indefinitely, nevertheless the process of establishing an ACCC investigation does bring some moral pressure to bear on firms seeking unjustified price increases.

In large measure the new part inserted by the Bill simply updates the language of the twenty-year-old prices surveillance Act.

Labor welcomes the fact that the Government rejected two measures recommended by the Productivity Commission which would have reduced the ability of the Government to conduct prices oversight.

The Productivity Commission recommended that

- The Minister should not be able to implement price monitoring without a inquiry or recommendation from the ACCC or National Competition Council and that
- The price notification provisions should be abolished.

Labor believes that the existing range of price controls should be preserved and that the decision about whether they are implemented should remain a matter for the Minister.

There is one aspect of this legislation that we do find unacceptable however and that is the provisions permitting the Minister to displace the ACCC and appoint another body to conduct price inquiries under the Trade Practices Act.

We do not see any justification for taking this role away from the ACCC.

According to the Productivity Commission report and the Minister’s second reading speech, the case for allowing the Minister to appoint another body to conduct price inquiries is based on a concern that the ACCC may be affected by a conflict of interest.

The argument is that the ACCC would be influenced to recommend on-going price monitoring because this would attract increased resources to the Commission.

Labor rejects this criticism of the Commission’s staff.

Since the Price Surveillance Act was enacted, the ACCC and its predecessor the Trade Practices Commission have demonstrated the skill, expertise and independence to efficiently and effectively carry out the prices oversight role.

The Commission’s experience minimises the administrative costs of establishing prices oversight. It also ensures that the appropriate indicators are monitored and reported on and that a consistent regulatory approach is applied in different industries.
The Parliament has no guarantee that any other body appointed by the Minister under this new Part would share these characteristics.

Shortly, I will move amendments on behalf of the Opposition to ensure that the ACCC is the only body that can conduct price inquiries under the Trade Practices Act.

Labor has long argued that price surveillance powers should not only be on the statute books but also used by Governments in markets where competitive forces are unable to deliver outcomes for consumers.

This Government has been very reluctant to use its prices surveillance powers.

At present price monitoring is only carried out in relation to container stevedoring and aeronautical and related services at certain airports.

One area where Labor has repeatedly called for regulatory intervention is in relation to bank fees.

Since the Howard Government was elected bank fees have skyrocketed.

A recent Macquarie Research report stated that since 1997 bank fees on consumers have increased by 17 per cent annually.

Fees on households now exceed $2.7 billion.

Earlier this month the ABA released a report, which attempted to argue, that compared to some other countries we don’t pay high bank fees and charges.

Commenting on the report in the Financial Review, Andrew Cornell delivered the bad news for consumers pointing at that the report implies that “....there is scope for banks to charge more. They have been rolling out technology that will allow them to do just that, but in a more precisely targeted manner, differentially pricing to a much greater degree to direct customer behaviour and extract revenue.”

The 120 per cent increase in consumer banking fees and charges since the Howard Government was elected is not enough for the banks. They want more.

Labor is particularly concerned about the outbreak of penalty fees such as late payment fees on credit cards.

Despite the fact that some of these credit cards incur interest rates of between 15 and 18 per cent, the big 4 banks have also imposed hefty late payment fees of up to $35.

These fees seem to bear no relationship to cost.

Significantly they are not subject to any competitive pressure because consumers are either unaware that they are buried in the fine print of the credit contract or don’t think that they will ever have pay them.

Labor believes that ACCC monitoring of bank fees and charges can improve the transparency fee movements and provide a check on the fee gouging activities of the banks.

In Canada following the recent reforms, the newly established the Financial Consumer Agency of Canada publishes annual reports on the cost of the banking.

Labor believes that this is a worthwhile initiative and would like to see the ACCC compile a similar report based on its formal monitoring of fees and charges.

Before I conclude, I would like to bring the Senate’s attention to several measures not included in this Trade Practices Legislation Amendment Bill.

Seven months after the government release of the Dawson Review of the Trade Practices Act the Government has still has not introduced legislation implementing its response.

The Government hailed the proposal to introduce a notification procedure permitting small business to collectively bargain with big business as a big win for the sector.

Collective bargaining was offered up a substitute for the Government failure’s to ensure that small business is protected against the misuse of market power by a strong section 46.

As we close in on the end of the Parliamentary year, the Minister for Small Business may care to explain why the Government has dropped the ball on this proposal.

Dawson also recommended criminal penalties for hard-core cartel activity such as bid rigging and price fixing.

In October, the Government referred this proposal off to a working party of officials.
This is a proposal that has been adopted by many other DECD nations including: the US, the UK, Canada, Japan, France, Germany and Ireland. The Dawson proposal does not take Australia into uncharted territory.

It simply brings us up to speed with best practice in competition law.

The proposals to introduce a notification procedure for collective bargaining and criminal sanctions have the in principle support of the Opposition.

The failure of the Howard Government to act decisively on these matters demonstrates clearly that is not interested in a strong and effective Trade Practices Act.

In contrast, Labor is committed to reforming the TPA to ensure that it appropriately protects small business and promotes competition in the interests of consumers.

Labor will present the voters with a clear choice on these issues at the next election.

**Senator MURRAY** (Western Australia) (8.56 p.m.)—I will speak briefly on the Trade Practices Legislation Amendment Bill 2003. The bill contains two measures impacting on the Trade Practices Act. The first is the third party access regime for essential infrastructure facilities contained within part IIIA of the TPA. As a result of the 2000 High Court decision in the Queen v. Hughes, the constitutional validity of various Commonwealth-state cooperative schemes, such as that dealing with third party access regimes, has been questioned. The amendments in this bill are an attempt to remedy the Hughes problem applying to the ACCC and Competition Tribunal powers in relation to state-territory access regimes. Similar legislation has already been passed by this parliament to resolve this constitutional problem in respect of the National Crime Authority, agriculture and veterinary chemicals and the Corporations Law. They allow for the possibility that state laws can impose duties on Commonwealth entities but provide for a fallback position in case it transpires that only a Commonwealth law can impose such a duty. This part of the bill is noncontroversial.

The second part of the bill repeals the Prices Surveillance Act 1983 and replaces it with a new part in the TPA preserving the existing prices surveillance powers. In 1983 the intention was to promote restraint in pricing to accompany wage restraint. The government strategy at that time was to control inflation while continuing to promote economic growth. Obviously the 1980s involved a very different inflationary and economic environment. More recently the focus has been to ensure that we have a vigorous competition policy. As the Productivity Commission have recognised in their report on the Prices Surveillance Act, it makes more sense for that act to be rewritten into the TPA. This would overcome some of the deficiencies in the current Prices Surveillance Act and complement the rest of the trade practices legislation. The Democrats are pleased to see that the government have accepted this recommendation of the Productivity Commission.

I was also pleased to see that some of the recommendations were rejected. Importantly, the commission recommended that the price notification system is an indirect form of price control and is no longer appropriate. The government disagreed and argued that removal of the existing price restriction provisions as recommended by the commission would weaken the government’s ability to respond promptly to concerns about price related matters. The Democrats agree that this could be contrary to the public interest and consumer protection and that it is an important policy device to retain.

The only amendment that the Senate is considering in this bill relates to the power of the minister to appoint another body other than the ACCC to conduct inquiries. The government has suggested that, as the ACCC
is designated to administer the price monitoring aspects of the TPA, an inquiry body separate from the regulator would be appropriate. The suggestion is that the ACCC cannot conduct an independent inquiry because it has a vested interest in ensuring that its price monitoring power is promoted.

If you are going to take that view on this particular issue, you have to take that view with regard to many regulators, because there is a constant situation where the regulator might be judge, jury and executioner, as critics sometimes complain, or be inquiring on a matter which they would subsequently have to regulate. I think it is horses for courses. The Australian Labor Party believes that we should not go this route, and I think that on balance they are probably right. I believe that the ACCC has the consumer knowledge and corporate intelligence across all industries to be the appropriate body to conduct any pricing inquiry. On that basis, I believe it is inappropriate to give the minister the power to appoint any body other than the ACCC to conduct an inquiry. In conclusion, the Democrats will be supporting this legislation.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.00 p.m.)—The Prices Surveillance Act 1983 was legislated over 20 years ago as one element of the then government’s prices and incomes policy. Just as the economic environment has changed markedly since that time, so too has the role of prices surveillance. No longer is prices surveillance properly seen as an adjunct to an incomes policy; rather, in a modern, open and flexible economy the role of prices surveillance is to complement a vigorous competition policy.

The Trade Practices Legislation Amendment Bill 2003 reflects this reality and inserts a prices surveillance part into the Trade Practices Act. Schedule 2 of this bill preserves the existing prices surveillance powers. Like the Prices Surveillance Act, the proposed part VIIA of the Trade Practices Act provides for selective surveillance of the prices of certain goods and services at the discretion of the minister. Declared companies and authorities are required to give notice to the Australian Competition and Consumer Commission before increasing the prices of notified goods and services and to wait a statutory period before implementing an increase.

The inquiry body, at the direction of the minister, may inquire into prices charged and conduct certain other inquiries such as investigating options for procompetitive reform. The Australian Competition and Consumer Commission is to be designated as the administrator for the prices monitoring provision of part VIIA. The minister would determine who would undertake an inquiry according to the relevant circumstances. An inquiry body separate from the regulator would be appropriate where the minister considers there is a possible conflict of interest involving the regulator. However, in other circumstances the expertise of the regulator may help to expedite an inquiry.

Under part VIIA, the commission—or other body, in the case of certain inquiries—will be obliged to take steps to protect the confidentiality of certain information that could damage a competitive position. Part VIIA also provides that an application may be made to the Administrative Appeals Tribunal for review of a decision by the commission to make information public, if a person subject to price notification claims the information is confidential.

Prices oversight is to be made more effective, but not more onerous, with enhanced compliance mechanisms. A chief executive officer of a company subject to prices oversight or a person nominated by the chief ex-
ecutive officer would be required to sign a declaration stating that the information he or she gives is true and correct. A new section is provided against a person who deliberately or recklessly provides false or misleading monitoring data to the commission.

In retaining the criminal offences of the Prices Surveillance Act, some offences have been restructured on the advice of the Attorney-General’s Department. This has resulted in a recasting of some of the burdens of proof so that no offence provision in part VIIA will inappropriately reverse the burden. The Prices Surveillance Act includes two offence provisions in which the defendant bears the evidential burden in relation to matters that should be established by the prosecution, as it should have access to the relevant information. The corresponding provisions of part VIIA will impose the appropriate burdens of proof on the prosecution. Also, in retaining the existing offences, some penalties have been increased on the advice of the Attorney-General’s Department. In particular, the Criminal Justice Division of the department has advised that an appropriate penalty for an offence against a secrecy provision is two years imprisonment or 120 penalties—that is sections 95ZP and 95ZQ of part VIIA.

Most businesses operate in competitive markets, and price controls can worsen existing inefficiencies and deter investment. Part VIIA provides that prices surveillance would only be applied in those markets where, in the view of the minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers. However, the government would retain its ability to protect consumers where appropriate through the mechanisms contained in part VIIA.

Price restriction powers may be applied either during a prescribed period—generally, no more than 21 days—under price notifica-
tion or during the term of a price inquiry, which generally would be of no more than six months duration. The minister may decide to initiate a price inquiry following a period of price restriction under price notification, but further price restriction beyond the term of that inquiry would need to be implemented through industry-specific legislation. Such legislation might be warranted where structural problems in an important market have been uncovered and where pro-competitive reforms would act too slowly.

Part IIIA of the Trade Practices Act 1974 concerns access to services and facilities and regulates access regimes. Schedule 1 of this bill proposes to amend part IIIA to clarify the ability of state and territory access regimes to confer duties on the Australian Competition and Consumer Commission and the Australian Competition Tribunal. It also seeks to clarify the conditions under which a law of a state or territory may confer functions, powers and duties upon the commission or tribunal. Of course, this clarification is necessary because of the Hughes case. Similar amendments were made to other Commonwealth legislation.

In conclusion, this bill modernises prices surveillance legislation while preserving the government’s existing powers and also clarifies the operation of access regimes. Although at this time of night it might sound a bit dry, it does provide a very important framework to enable prices surveillance to be carried out. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CONROY (Victoria) (9.07 p.m.)—by leave—I move the Labor amendments on sheet 3199:
These amendments are straightforward and, as I indicated in my speech in the second reading debate, Labor does not believe it is appropriate or desirable for the minister to be able to nominate a body other than the ACCC to conduct price inquiries under the new part VIIA to be inserted into the Trade Practices Act. The ACCC has considerable experience and expertise in carrying out the prices oversight role. This experience minimises the administrative costs of establishing prices oversight and also ensures that a con-
sistent regulatory approach is applied in different industries.

Labor believes that the concern expressed by the government about the potential for a conflict of interest is more theoretical than real. While Labor is proposing 26 separate amendments, the key one is amendment (2), which omits the definition of inquiry body in proposed section 95A. The other changes are consequential on the removal of this definition, which envisages a body other than the commission being appointed as inquiry chair. It seems to be a perverse case of privatisation where we would be hiring outside consultants at the behest of the minister nominating them. That is the ACCC’s job. This is essentially about ensuring the continued role of the ACCC. I commend these amendments to the chamber.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.10 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

TRADE PRACTICES AMENDMENT (PERSONAL INJURIES AND DEATH) BILL 2003

Second Reading

Debate resumed from 15 October, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator BUCKLAND (South Australia) (9.10 p.m.)—On behalf of Senator Webber, I seek leave to incorporate a speech on the Trade Practices Amendment (Personal Injuries and Death) Bill 2003.

Leave granted.

Senator Webber’s incorporated speech read as follows—

I rise to speak on the Trade Practices Amendment (Personal Injuries and Death) Bill 2003.

This bill forms part of the Howard Government’s response or perhaps more correctly their lack of response to the increase in public liability and professional indemnity insurance premiums.

There is no doubt that there was a crisis in the market.

That crisis was caused by many factors but has been compounded by the Pontius Pilate act of this government and this minister.

This is not the first time that I have spoken on this issue and others affecting the Insurance industries and nor will it be the last.

This Bill is the result of a Government appointed review into the law of negligence.

This review was charged with finding a method to limit liability and the size of damages arising from personal injury and death.

The particular emphasis of the review was the operation of the Trade Practices Act 1974 and to ensure that individuals would be prevented from launching actions under the act.

It was of course important that this was done we are told by the Government to ensure that at the same time that the States and Territories were amending laws relating to damages that this change would not be undermined by people being able to commence actions under the Trades Practice Act.

This practice is referred to as Forum Shopping.

In other words if there were inconsistencies between the Commonwealth laws and those of the States, an individual could shop around for the best outcome.

Actions that could normally be undertaken under a State jurisdiction could be moved to the Trade Practices Act.

This Bill is the first in a series of bills that will amend the Trade Practices Act.
These amendments are the latest in a plank of changes designed to prop up the existing system of liability and professional indemnity insurance.

As I have said before in this place, the bottom line is that the Government has tinkered around the edges to keep the existing status quo.

Not once during this issue has the Government considered whether the system is broken beyond repair.

Perhaps what is needed is not the standard exercise of shifting the deck chairs but maybe a whole new boat.

But that is what we have got.

A series of amendments that are all about shifting the deck chairs—that is by removing the capacity of individuals to bring actions under the Act.

Rather than a new approach to personal injury that takes the lawyers and the insurance companies out of the process.

What these amendments do is to ensure that individuals cannot bring actions under the Trade Practices Act for personal injury or death.

There is a very real risk for our citizens from these amendments.

Does this legislation still provide for the rights of a consumer who is injured or killed by misleading or deceptive conduct?

Has the Government's response to the public liability and professional indemnity crisis bought us to the point where we are legislating away the rights of a consumer.

In certain other countries in the world and especially that country just across the Tasman Sea they have taken another approach.

The New Zealand National Accident and Compensation scheme they have ensures that no individual has to seek recourse to the courts to safeguard their future medical needs.

In New Zealand the scheme provides that individuals are protected financially.

That scheme has been in operation since the early seventies.

The one ground that a person in New Zealand can use as the basis of an application to the courts, is that of negligence.

If a person or company is negligent then they can be sued.

And that is the problem with these amendments.

We are being asked to take a sledgehammer to the rights of consumers in this country.

To ensure that tort law reforms in the states and territories are not undermined we are removing important provisions from the Trade Practices Act.

We have to remember that the safeguards were put in there for a reason.

To protect the rights of the consumer!

Now of course that has all become irrelevant.

Now in 2003 when we weigh up the rights of the consumers against the well-being of the insurance industry the consumers miss out.

Let us make no mistake about it.

There are no half measures in this Government's faint-hearted and feeble response to these issues.

When you are confronted with an industry in crisis, an industry that overnight begins to rapidly increase its prices and to refuse policies to individuals and organisations that previously enjoyed reasonable insurance premiums, the Government runs around telling everyone that it is fault of consumers seeking recourse through the courts.

Therefore we had to reform tort law.

Then we get the knock on effect.

You can't engage in tort law reform in the states if you don't amend the Trade Practices Act.

At no stage in this insurance crisis did this Government examine a response that could have resulted in reform.

No consideration of the New Zealand model.

No consideration of any other model except the one of papering over the cracks.

It is about time in this country that when major shortcomings are identified in the system that our first and indeed only reaction is not to prop up the existing system.

We should not be amending legislation that allows insurance companies to get off the hook on this one.

We should not be amending legislation to remove the legitimate rights of our fellow citizens to seek
recourse when they are injured or killed through misleading or deceptive conduct.

We should have invested our collective energies in looking a new solution to the problem of rapidly rising premiums.

A model that guarantees an individual’s health needs are met for the remainder of their life without the need to take action through the courts.

Let us remember that the reason that we have got to this situation is that we have not taken the steps to care for the seriously injured in our community other than through the legal system.

And when that gets to be too much for the professions and the insurance industry our response is to remove the rights of our citizens.

We need reform not tinkering.

And let us be clear about one other matter.

The crisis in the insurance industry appears to be over.

We know that during the 1990s the industry incurred underwriting losses.

However with a decent return from their investment incomes that still enabled them to earn profits.

With the crisis of the last few years the insurance industry hiked its prices and government across Australia amended tort law.

Now with Public Liability being a relatively small part of their total business, most insurance companies have returned to profitability.

Not simply because of increased premiums and law reform—but changes in the operating environment and other factors.

In fact just looking at three examples we find that QBE has a reported net profit of 241 million for the first half of the year which represents an increase of 110% on last year.

IAG a net profit of 153 million with underwriting profit up some 57 million

Suncorp Metway with a net profit of 384 million and with second half general insurance earnings jumping 140 per cent to 161 million.

Those results certainly paint an industry in crisis.

Let us be clear that the income earned from public or product liability represents only 6 per cent of premium revenue.

Therefore to take the wind out of the government’s sails the tinkering that has been engaged in is not the sole reason or explanation for the insurance companies return to profitability.

The ALP intends amending this bill to ensure that our citizens are not disadvantaged under the law.

An amendment that ensures that companies who engage in misleading and deceptive conduct which causes either personal injury or death have to take responsibility for their actions.

The effect of the ALP amendment is to align damages for personal injury for breach of Part V Division 1 with those available under the relevant State or Territory civil liability laws.

By aligning the damages there is no longer any reason for individuals to engage in Forum Shopping.

There is no reason to attempt to opt out of the State law because the damage are the same.

What it does do however is to ensure that the rights of our citizens are protected.

There would still be recourse to the Trade Practices Act when companies engage in misleading or deceptive behaviour.

There are still strong incentives for companies to minimise risk.

These amendments will not change the Government’s objective which is to ensure that customers do not Forum Shop.

What they do is to retain the rights of our citizens under the law without undermining the efforts of the States and Territories tort law reform.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.11 p.m.)—The Trade Practices Amendment (Personal Injuries and Death) Bill 2003 embodies the first tranche of commitments made by the Australian government at the November 2002 Ministerial Meeting on Insurance Issues to amend the Trade Practices Act 1974 to ensure that tort law reforms being undertaken by the states
and territories will not be compromised by Commonwealth laws. A second trade practices amendment bill will see the completion of the Australian government’s undertakings to the states and territories to underpin through trade practices reforms the many tort law reforms being made by the states and territories. This present bill specifically implements the recommendation made last year by the principles based review of the law of negligence, headed by the Hon. Justice David Ipp, that if state and territory tort law reforms in this area are to have any effective impact section 52 of the Trade Practices Act 1974 should not be able to found damages claims for personal injuries or death.

Section 52 of the Trade Practices Act 1974 is the strict liability provision that prohibits misleading or deceptive conduct by corporations in trade or commerce. It is a law that was only ever designed to ensure the existence of fair trading practices, yet it has significant potential to be used in such a way as to found unlimited damages for personal injuries or death and to do so even though the defendant cannot be shown to have been at fault and even though the defendant cannot be shown to be negligent.

The potential is made all the more attractive now that the states and territories have introduced caps and thresholds on damages that their courts may award at common law and have reformed their laws of negligence. The very real potential if realised could see these and mirror reforms already made by some states and territories to their own fair trading laws made meaningless. It could see all jurisdictions, Commonwealth and state, through no fault of their own, unable to fulfil the unanimous agreement struck in November 2002 to implement a nationally consistent set of tort law reforms wherever possible.

The Trade Practices Amendment (Personal Injuries and Death) Bill 2003 substantially delivers against the Commonwealth’s commitment to support nationally consistent tort law reform. The second trade practices amendment bill will complete the Commonwealth undertaking to support this state and territory reform agenda. Just because the problems community groups, sporting clubs, small businesses and others have faced with public liability insurance are temporarily out of the headlines, the Senate should not be lulled into complacency. All Australian governments have accepted that these uncertainties must be overcome and the measures in the bill supported if they are to play any role in helping to reduce the costs and incidence of insurance claims. These uncertainties would remain if this bill is opposed. The measures contained in this bill, by removing the representative capacity of the Australian Competition and Consumer Commission and that of individuals to bring civil actions for personal injuries or death under a strict liability provision of Commonwealth law, will be a significant step to implementing a nationally consistent set of tort law reforms. This consistency is vital to providing a sustainable solution that our community requires.

Some senators incorrectly believe that the measures contained in this bill will water down consumer rights and protections. Put simply, the reform measures contained in this bill remove the latent and very real potential for the strict liability arrangements for misleading and deceptive conduct to justify personal injury claims payouts even though the person defending the claims may not be found to have acted unreasonably or dishonestly. It may assist the Senate if I provide a practical example of the potential for the Trade Practices Act 1974 to create perverse outcomes without the measures in this bill being implemented. This is particularly
likely to occur in response to state and territory tort law reforms. To take a medical example, states and territories have all agreed to implement a revised basis of liability in medical negligence cases. They have agreed to change the law of negligence such that a medical practitioner will not be found liable if it is established that he or she acted in a manner that, at the time the service was provided, was widely accepted in Australia by peer medical opinion to be competent practice. The only time the court would disregard peer medical opinion is if the court considered that the opinion was irrational.

To develop the example, under the Trade Practices Act a diligent surgeon who takes all reasonable care in recommending that a patient undergo an operation to have a growth removed on the basis that it could be malignant may be found to have misled the patient if it were later discovered that the growth was benign and the operation unnecessary. Thus damages for personal injuries could be awarded under the Trade Practices Act against an affected surgeon, notwithstanding that medical peers would be likely to regard such a procedure as competent practice and, indeed, believed the surgeon was prudent to have taken such action.

How can a doctor defend himself or herself under such conditions? Opposing the bill in its current form is tantamount to saying that it is acceptable for some persons who have not been negligent, who are not at fault, to have to pay damages to a person who suffers personal injury even though those persons should not sensibly or morally have to pay those damages. Additionally, opposing the bill in its current form leaves open the very real prospect that plaintiffs can circumvent negligence laws and recent state and territory reforms by bringing themselves within a no-fault Commonwealth law. This is the same as saying that it is acceptable and right that the blameless in our society should be made to pay.

During the debate on this bill, Senator Conroy argued that, if this bill were enacted in its present form, a company that misled a consumer in a way that caused injury or death would not be liable to pay any compensation under the Trade Practices Act, nor would the ACCC be able to bring an action to recover damages on behalf of people who suffered such an injury. The Ipp review recognised that these provisions of the Trade Practices Act were not the correct vehicles for claims of compensation for personal injuries. The opposition appears to fail to understand that, where appropriate, people will still be able to seek compensation for personal injuries in accordance with state and territory law. It was said by those opposite that there was no reason to completely excuse companies that engage in misleading or deceptive conduct that caused personal injury or death from the consequences of those actions. This bill does not excuse companies that engage in misleading or deceptive conduct. For example, an injunction could still be ordered to force the company to desist from misleading or deceptive conduct and, where appropriate, individuals will be able to seek compensation for personal injuries under state and territory laws.

Those opposite told the Senate that any legislative response should be proportionate to the size of the problem. I can assure them that the blow-out in the cost of public liability insurance is no small problem. I have now met six times with state and territory ministers and the Australian Local Government Association to discuss insurance issues. This very successful series of meetings has produced agreement between all levels of government, whatever their political persuasion, on the need to introduce measures to reduce and contain claims costs so as to im-
prove the availability and affordability of public liability insurance.

This bill is an appropriate and proportionate response to these issues and is one that has been requested and agreed to by state and territory Labor governments as a necessary and essential underpinning to the reforms they have put in place. The government bill is a response to these issues. This bill balances the need for a viable and sustainable insurance market with the need for consumers to be able to claim adequate compensation for personal injuries. As a result, the government’s bill ensures that states and territories civil liability reforms will not be undermined by the Trade Practices Act.

Another argument against the provisions of this bill appears to be that the Trade Practices Act is rarely used as a basis for a claim. I think that was also raised by the Democrats, and some reference to forum shopping was also raised. The Ipp review noted that what has so far been a rarity in relation to personal injuries claims under the Trade Practices Act may become commonplace unless steps are taken to prevent this from occurring. The introduction of state and territory civil liability reforms creates a significant incentive for plaintiffs to use the Trade Practices Act provisions to enlarge the range and scope of actions for personal injuries.

We have also been told by the Insurance Council that, in their experience, it takes some two to three years for alternative forms of action to be utilised and for trends to become clear. They were asked why, if section 52 had been a strict liability provision since 1974 and it was easy to bring claims under the Trade Practices Act, the provision had not been used more often. The Trade Practices Act, on my understanding, is pleaded frequently in cases involving personal injuries. However, according to the Law Council, between 1989 and 2002 there were some nine reported cases where a personal injuries claim was decided on the basis of misleading and deceptive conduct. As the ACCC noted in its evidence to the Senate committee, when a court is faced with alternative pleadings of negligence under the Trade Practices Act it will not necessarily make a decision on all matters pleaded.

The Ipp review identified the potential for claims under division 1, part V of the Trade Practices Act to be used as an alternative to claims in negligence and as a mechanism by which the reforms to the law of negligence could be undermined. Other concerns were raised about the fact that there is no criminal provision equivalent to section 52 and that the threat of an injunction is unlikely to deter misleading and deceptive conduct. However, the government believes that firms will continue to be encouraged to adopt prudent risk management practices after the bill is passed. Why would any firm be deliberately negligent? For one thing, any firm engaging in unfair practices risks continued action at common law, in contract or tort, for deceit or for negligent misstatement. Given the continued availability, indeed even the risk, of being liable under these other causes of action, there are substantial deterrents to misleading or deceptive conduct that causes personal injury.

There was also some reference to profits recently reported by large insurance companies being proof that the industry was no longer struggling. I remind those who frequently refer to this point that recent profits announced by insurance companies have grown from a very low base. In some cases, companies have been reporting significant net losses and unsustainably low profits for several years. It is important to note that the consolidated financial statements reported in the media rarely include a breakdown for the Australian general insurance sectors, nor do they generally include a breakdown into
classes of insurance. Consequently, the reported net profit figures represent both international and local operations, as well as short- and long-tail prices of insurance.

A number of large insurers actually obtain the majority of their profits from their overseas operations. For instance, QBE’s Australian general insurance business only accounts for around 30 per cent of the total net profit for the global company. Obviously, profitable insurance companies are essential to maintain a sustainable insurance sector and to ensure that access to appropriate insurance continues. Insurance companies that experience sustainable levels of profitability are more able to offer premiums that are appropriately priced and to bring capacity and deepen the liquidity of the insurance market in Australia. Years of unsustainably low profits have recently put upward pressure on premium prices, so a return to profitability is good news for consumers and, as I said, also means more liquidity in the market and ought to have some impact on whether Australians need to access cover from unauthorised foreign insurers.

There was also a point raised about insurers surveyed by the ACCC and the forecast that premiums would continue to rise. The fact is that the ACCC considers that it is too early to gauge the extent to which reforms have lowered insurers’ costs and whether these cost savings have been passed on to consumers; that will be assessed in future reports when data on actual outcomes becomes available. The ACCC report concludes that there is evidence that some public liability insurers expect government reforms to reduce claims costs, and they have correspondingly adjusted premiums downwards in 2003. In another capacity, as part of the medical review panel, a recent PricewaterhouseCoopers report has now put the likely downward pressure on premiums at a very high percentage—I think it is now around 30 per cent—when all the tort reforms flow through.

But we can already look to the actuarial assessments of the changes recommended in the IPP report, conducted for the insurance issues working group by PricewaterhouseCoopers. It is an earlier report which found that those changes where the financial impact could be assessed could see a net reduction in public liability claims costs of 14.7 per cent. Some other insurers appear not to be factoring cost savings into their premiums for 2003. I encourage those companies that are not factoring cost savings into their premiums pricing to do so, and to do so quickly.

A number of other points were raised in the earlier debate, but I do want to emphasise that those who oppose the bill do not acknowledge that, in the absence of a strong, affordable and sustainable public liability insurance market, the broad range of consumer protections that have been built up over the years are, really, worthless. This legislation seeks to balance the need for affordable public liability insurance with appropriate protections in the event of personal injury or death. Particularly in this case, the IPP review and the government consider it appropriate that such personal injury claims be pursued under state or territory law. I think there has been overwhelming support from each of the state treasurers, who are members of the insurance ministers meetings. The AMA has supported these amendments. In fact, as those present in the chamber would be aware, the government is currently working to resolve a range of issues in medical indemnity to ensure affordability of cover for doctors and security of cover for both doctors and their patients. The withdrawal of doctor services is a matter that affects the community very deeply, and it should be a matter of concern to all of us.
As well as providing a range of subsidies and other assistance directly to doctors, tort law reform is seen as a key part of an integrated solution to the very complex problem of medical indemnity. The amendment being put forward by the opposition is certainly not the way that this parliament should be going about resolving these problems. Doctors certainly will not be thanking the ALP for such an amendment, which fails to effectively underpin the reforms being undertaken at the state level. I am aware that the AMA has pointed out to the Labor Party that it has a range of concerns about the foreshadowed amendment and that, if the opposition continue to insist on these amendments, they are raising a whole new area of concern for both doctors and their patients.

The rationale is clear that, as water follows a crack in the ground, inventive attorneys will obviously find a way to use the Trade Practices Act as an alternative way to sue for personal injuries. It is a way that one can potentially enlarge the manner in which a claim is framed, and it is certainly going in the opposite direction to the whole thrust of the reforms that have been very carefully discussed and, indeed, implemented by way of an agreement by those who participated in the ministerial conference. In fact, New South Wales and Tasmania have amended their mirror legislation, the Fair Trading Act, so they are ahead and have made amendments in good faith on the basis that the Commonwealth will also amend the Trade Practices Act in the way described.

So be it on your heads, Senator Conroy and those opposite who appear to have foreshadowed an amendment of the kind that we have discussed this evening. It will lead to an absurd situation where you are going against what experts recommend and where all the state governments have agreed and urged this course upon you. Also, it will lead to a situation where it will depend what state you are in as to what amount in damages you might receive. It is clearly an absurd situation. Uniformity is clearly to be preferred—it is what has been recommended—and I commend it to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CONROY (Victoria) (9.30 p.m.)—by leave—I move amendments (1) and (2) standing in my name and that of Senator Ridgeway:

(1) Schedule 1, item 2, page 3 (lines 9 to 15), omit subsection 82(1A), substitute:

(1A) Where a person suffers loss or damage by conduct of another person, and:

(a) the action would be based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury;

in awarding damages under this section, the amount of damages recoverable must not exceed the amount of damages recoverable under the civil liability law of the State or Territory where the event giving rise to the loss or damage occurred or the State or Territory which had the closest connection to the event giving rise to the loss or damage.

Note: An example of a relevant law of a State is the Civil Liability Act 2002 of NSW.

(1B) In circumstances where subsection (1A) applies, a person who suffers loss or damage by conduct of another person may not recover the amount of the loss or damage by an action under this section to the extent to which the death or personal injury is attributable to any act or omission of the person who suffered the loss or damage.
(2) Schedule 1, item 5, page 3 (lines 22 to 31), omit subsection 87(1AB), substitute:

(1AB) Where a person suffers loss or damage by conduct of another person, and
(a) the action would be based on the conduct contravening a provision of Division 1 of Part V; and
(b) the loss or damage is, or results from, death or personal injury;
the amount of damages recoverable under this section must not exceed the amount of damages recoverable under the civil liability law of the State or Territory where the event giving rise to the loss or damage occurred or the State or Territory which had the closest connection to the event giving rise to the loss or damage.

(1AC) In circumstances where subsection (1AB) applies, a person who suffers loss or damage by conduct of another person may not recover the amount of the loss or damage by an action under this section to the extent to which the death or personal injury is attributable to any act or omission of the person who suffered the loss or damage.

These amendments are a proportionate response to the possibility that plaintiffs may seek to avoid the reforms to negligence laws by crafting their cause of action to bring it within the terms of the Trade Practices Act. Rather than completely removing the right to seek damages under section 82 of the TPA for personal injury and death caused by a breach of part V division 1, amendment (1) will ensure that the quantum of damages that can be obtained will be no more than under civil liability law of the state or territory in which the event giving rise to the personal injury occurred. Amendment (1) will also ensure that a court can reduce the quantum of damage where the plaintiff is to some degree responsible for the loss or damage that they sustained. Last year’s High Court decision in the INL securities case confirmed that no concept of similar contributory negligence applies under the TPA. Labor recognises that this may provide an incentive for a claimant to pursue an action under the TPA rather than in negligence, so amendment (1) therefore seeks to align part V division 1 of the TPA with negligence law in relation to this matter.

Amendment (2) is designed to ensure that the provisions that I have just described will also apply where the ACCC brings a representative action on behalf of people who suffer personal injury or death as a result of a breach of part V division 1. As I stated earlier, the ACCC has run only one representative action seeking personal injury damages in its history. Nevertheless, as a matter of fairness, Labor believes that the amount of damages that a consumer receives should not depend on whether a person brings an action in their own right or whether the commission represents them. In discussions on this bill, the government has raised the issue that these amendments may fall foul of section 99 of the Constitution. Section 99 of the Constitution states:
The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

It is argued that an effect of our amendments will be that people in different states will be entitled to a different amount of damages under the TPA and that this amounts to a preference. Labor notes that the government has foreshadowed further legislation amending the TPA to align damages under the unconscionable conduct provisions with state law and to facilitate professional standards legislation in the states and territories. If section 99 presents a problem for these amendments, it will also present a problem for the government’s proposed bills. If the government believes there is a better way to achieve
the object of these amendments, we would welcome the opportunity to discuss alternative approaches.

Labor has sought advice from the Law Council on this issue and has been advised that the better view is that the amendments are consistent with section 99. In their advice, the Law Council stated that it is clear that the relevant preference under section 99 of the Constitution is a trading or commercial preference, a tangible advantage of commercial character to a state or part thereof. In the Law Council’s view, it is not likely that variance between state laws on damages provides a tangible commercial advantage to a state, as distinct from the obvious benefits that accrue to those individuals who benefit from less exposure to liability in one state than in another. Even if a commercial advantage would be given to a state under the amendments, it can be noted that the advantage would be because the state law on damages provides a commercial advantage. In other words, any preference that occurs as a result of the proposed amendments to the bill is a feature of state law rather than Commonwealth law. The proposed amendments treat all states and territories the same. Labor calls on the Senate to support these amendments, which maintain the consumer protection provided by the TPA, while ensuring that the act is not used to undermine the state and territory tort reforms.

Senator RIDGEWAY (New South Wales) (9.34 p.m.)—I also want to say a few words about the Democrats’ position in relation to the amendments. As Senator Conroy has already indicated, the Australian Democrats are conjointly moving the amendments with the opposition. There is a very good reason for this, as the Democrats stated in the second reading debate—first of all, we note that the way in which this bill is being dealt with, as part of the process of reforms, seems to be somewhat imbalanced in relation to the way that the bills were previously dealt with, and I note the comments by the minister in this regard. I think it is important not only to highlight that here we are talking about provisions in the Trade Practices Act that contain key consumer protection measures which allow people to recover damages for any loss that they have suffered as a result of a breach of the provision but also to note that the ACCC may also bring representative actions on behalf of any person who may also have suffered a loss covered by the legislation.

The amendments that the government are bringing forward in the bill are essentially about preventing actions for damages, particularly where the damage is or results in personal injury and death and where it will also prevent the ACCC from being able to bring representative actions under the bill. It seems to me that, whilst the bill is part of the government’s response to the insurance crisis and, more particularly, implementing the recommendations of the Ipp review, we need to keep in mind that we are seeking, through these amendments, to restore some balance to the reforms and to put in place some preventative actions, in line with the reform bills that we dealt with previously, which the Democrats were happy to support.

So in many respects we are talking about not only moving down the path of supporting something that abolishes the right of an individual to take action for any personal injury or death but also limiting the amount of damages that are recoverable and the opportunities that are there to be able to take action in relation to the Trade Practices Act itself. It is not about the government’s approach; the government ought to acknowledge that this particular bill is very much out of sync with the reform processes that have been put forward previously.
We will not be supporting the bill for those reasons, keeping in mind, as Senator Coonan would appreciate, that the ACCC and APLA submissions identified situations where failure to access provisions of the TPA for personal injury and death could amount to an injustice, especially where the claim is relevant to the Trade Practices Act and the law of negligence is not applicable. As part of the inquiry, a number of views were put forward by the Australian Consumers Association. They pointed out the danger that abolishing this right will undermine the strict liability consumer protection regime of the TPA which seeks to allocate risk to the party in the best position to access the magnitude of that risk and take the appropriate steps to reduce it or avoid it altogether.

In the past the Democrats have supported the amendments put forward by the minister with respect to liability for recreational services as that applied to the Trade Practices Act. We thought that that was a fair and decent way of trying to find a balance. But this particular bill is of a completely different odour, I have to say, in the sense that what it seeks to do is to abolish rights for people to be able to bring actions. In all good conscience, the Democrats cannot support that. Hence, we will be supporting amendments (1) and (2) jointly with the opposition.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.39 p.m.)—What is puzzling about the contributions from Senator Conroy and Senator Ridgeway is that both the Democrats and the federal Labor Party should be so out of step with every state and territory government and the Commonwealth government; out of step with the recommendations of the Insurance Council of Australia; and out of step with the AMA and doctors who are so desperately concerned about the undermining of the reforms that have been implemented, in large part driven by the crisis in medical indemnity, let alone public liability and professional indemnity. They are out of step with the expert assessment of Justice David Ipp and an expert panel commissioned by the government and supported by all of the Labor states and territories to undertake a principled approach to this so it would not be a piecemeal reform; it would be a comprehensive reform and one that is likely to have some real impact on the cost of claims and to make insurance more available and affordable for everyone. The review was there very much to get the balance right—it was certainly not there to impact unduly upon the rights of anyone—so that there would be insurance for those who needed it.

What is most disappointing is that, despite all of the support for these reforms, suddenly, out of the blue, up pop the federal Labor Party and the Democrats who consider that they know better than everyone else who has taken advice and has been working on these reforms for the best part of 18 months to two years—all with the underlying intention of making insurance more available, improving conditions for the framework of insurance and trying to get capacity back into the market. Who pop up to undermine it but the federal Labor Party—cutting the legs off their state counterparts—and the Democrats who jump on the bandwagon!

I am not suggesting that the intention behind these amendments is not sincere; I am saying that they are very misplaced and show a fundamental lack of understanding of the intent and the whole thrust of the reforms, including this bill. They fail to acknowledge that there is a very real problem, because they cannot help but introduce greater uncertainty and complexity for plaintiffs and the insurance market, particularly as the legal linkages that these amendments seek to set up will need to be tested and challenged in the courts. So there is a great period of uncertainty, during which time the setting of
premiums is affected and insurers and actuaries cannot be certain whether or not that can flow through to downward pressures on premiums. The amendments do not define civil liability law or which particular types of action define the relevant cap for the purposes of the Trade Practices Act, so it is very uncertain. There is no easy way to ascertain which is the relevant course of action to determine the applicable cap. I do not know whether Senators Conroy and Ridgeway have really seriously thought about that. As I said, I am not questioning the sincerity of the senators; I am desperately concerned that the implications of the amendments being put forward are not really understood.

The amendments could also leave questions as to which state or territory law should be applied. It is going to be an absolute field day for the lawyers and an absolute field day for a trip to the High Court. There is broad agreement that, if we truly want to deliver concrete results to resolve public liability insurance problems, medical indemnity in this country and professional indemnity, we should be striving for greater certainty, not more confusion. I have just given you a few examples where confusion will abound. These amendments are particularly misplaced because other remedies are available. It is not as if this is the only avenue and we are shutting it all down in a way that denies plaintiffs their rights. The comment that the bill will represent a real moral hazard to professionals by deterring them from engaging in good and best practice risk management I think is very misplaced and misguided.

If the bill is read closely, it is clear that people will still have a range of rights—not only under the Trade Practices Act because of the injunctive power but also there is nothing to suggest that corporations would not be liable under the laws of negligence. Where fault can be established under other provisions of the Trade Practices Act, such as unconscionable conduct or breach of product safety provisions, those areas are clearly there for the advantage of plaintiffs injured as a result of harm occasioned in the provision of goods and services. Claims for personal injuries or death will continue to be made available. To suggest, as some have done, that this bill will result in cost-shifting to the Commonwealth is not only contradictory to any argument that there should be a cap on actions mounted under section 52 but also without foundation.

This is a bill that strikes a balance. I say that particularly to Senator Ridgeway, because we do have to get this balance right. I accept that everyone wants to get the balance right; it is just that we are coming at it from different angles. The bill in its current form strikes the correct balance for all Australians by preserving their rights at common law to claim damages for personal injuries—rights they should and must have—where they can show that another person was at fault. But it is not the way to go to allow those injured, through the no-fault provision, to establish a claim for personal injuries under the Trade Practices Act. That is simply not fair. In fact, I would have thought that senators opposite would find it almost un-Australian—to use that phrase—to allow actions for damages to be taken where a person cannot be found to be at fault. The doctor who in good faith recommends an operation that turns out to be unnecessary could be liable. That is not the outcome that the Senate intends.

I certainly do not accept that that is what either Senator Conroy or Senator Ridgeway intend by their amendments, but they leave it wide open. The degree of uncertainty and confusion that these amendments will cause will go a very long way to stopping dead in its tracks the coherence of the reforms that we, together with Senator Conroy's state Labor colleagues, have endeavoured to put in place for the past 18 months. I urge you to
look at it again—if not tonight then on another occasion. Look at the confusion and the problems that these amendments will cause. I commend to you the bill the way in which the government wishes to achieve it. It is not that I am standing here bloody-minded or in any way not prepared to look at sensible amendments. These are not amendments that should find favour with any Australian.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.48 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.48 p.m.)—I move:

That government business orders of the day no. 5 (Family Law Amendment Bill 2003) and no. 6 (Legislative Instruments Bill 2003 and a related bill) be postponed till a later hour.

Question agreed to.

NEW BUSINESS TAX SYSTEM (TAXATION OF FINANCIAL ARRANGEMENTS) BILL (NO. 1) 2003

Second Reading

Debate resumed from 24 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (9.49 p.m.)—I rise to speak to the New Business Tax System (Taxation of Financial Arrangements) Bill (No. 1) 2003. Those who have heard my speeches previously will know that I like to place on Hansard a record of the additional amount of taxation law we create each time we pass a taxation bill. This bill represents another 127 pages of legislation and an accompanying 133 pages of explanatory memorandum. It will pass into law, because we will support it. Once again, the nature of the legislation means that we are placing a great deal of trust in the Treasury and the Taxation officials to get the legislation right, although the Senate did its part with the Economics Legislation Committee taking submissions and evidence on the bill. Nevertheless, these matters are technical and complex. They are such that members of the committee were not as fully across them as they might have been had each and every one of them been a tax expert.

The bill essentially has two functions. Firstly, it removes the tax on conversion of certain financial instruments. Secondly, it clarifies a number of uncertainties and anomalies in relation to the taxation of foreign currency. The first three schedules implement recommendation 9.7(b) of the Ralph Review of Business Taxation. This recommendation was that, although generally taxation should occur at the time of disposal, an exception should apply where there is a conversion of an interest into shares. It was noted that the existing treatment created cash flow difficulties and confusion for investors. The example I am aware of is the Suncorp Metway convertible notes. Those notes converted to a share after three years. The tax rules treated the conversion to a share as taxable, and the gain was taxed even if the investor held on to the share. So the investor paid tax on a gain before they had actually sold the asset. For converting instruments issued after 14 May 2002, this bill will calculate tax at the time the share is sold, which is far fairer. The gain will be the difference be-
tween the disposal proceeds and the original cost of the instrument.

I must stress that there is no reduction in the overall amount of tax collected. This bill simply defers the taxing point until the share is sold. This amendment will bring Australia’s tax treatment of convertible instruments into line with the United States, Canada and the United Kingdom. As I said, the amount of tax should not change. Any reduction of tax would have occurred as a result of the capital gains tax discount that the coalition and Labor agreed to back in November 1999. I have outlined the negative economic consequences of this on several occasions. The Senate Economics Legislation Committee considered the bill, and the minority report of Labor sought clarification on the medium-to long-term revenue effects of the bill. There was a concern about the increased anti-avoidance opportunity that the bill may create. As I have outlined, my conclusion is that the bill will not cause any overall reduction in tax. Therefore, in the medium to long term, I do not expect there to be any overall revenue reduction.

But, as always, there may be some clever tax lawyers who try to look for loopholes in all tax legislation. Australia does, however, have a solid general antiavoidance provision—part IVA—that covers any situation like this. As always, when we are dealing with complicated, sophisticated and very technical amendments to the taxation law, we do have to place faith in the legislation that Treasury and the tax office have produced and in the existing measures to attack general antiavoidance.

The second part of this bill deals with the treatment of foreign currency. Obviously, any tax that Australia collects needs to be calculated in Australian dollars. This can be complicated when income is earned offshore but is still subject to tax in Australia. The exact exchange rate to convert the income back to Australian dollars must be certain—or, at least, certain from a tax perspective—to ensure there are no avoidance opportunities.

The Senate Economics Legislation Committee did recommend that Treasury officials re-examine some of the more technical areas that this bill deals with. This was specifically as a result of concerns from the banking industry and the International Banks and Securities Association, known as IBSA. I have been assured that these issues have been considered, but that amendments are not considered necessary in this bill. In accepting that view, we are again obliged to place faith in Treasury’s conclusions.

While we are talking about taxation laws and the integrity of the tax system, I would briefly like to refer to some of the comments of Sir Nicholas Montagu, Chairman of the United Kingdom’s Inland Revenue, in the lecture at Parliament House and in the subsequent meeting we had with him in the economics committee. His lecture was titled ‘Tax morality: paying tax as a badge of citizenship’. Sir Montagu outlined some key concepts that the Inland Revenue was using to persuade Britons to pay their taxes. The key words he was using were ‘contributing’, ‘fairness’ and ‘UK’. The researchers found that by using these words, taxpayers became less resentful of their tax obligations. The concepts of ‘contributing’ and ‘fairness’ take away the individualist idea that tax is theft and is there to be avoided.

One of the problems with encouraging us all to accept our taxes with minimal reluctance is that we do not view all government expenditure as beneficial, so taxes need to be specifically tied to outcomes for the public to accept them. To put that in an obvious context, the Medicare levy is accepted as a tax because people believe the money raised is
going into the health system. The main point of Montagu’s lecture was that taxpayers are more accepting of their contribution if they feel that others are paying their fair share. If this is not the case, the mob mentality takes over, and they look for greater avoidance opportunities. This is self-perpetuating: the more you see your neighbour, fellow worker or boss avoiding tax, the more inclined you are to do it. This seems obvious. So the government has an obligation not only to use its stick to punish tax avoiders but also to encourage the community to accept their tax payments as a contribution to a decent, fair Australian society.

I raise these remarks in the context of this bill because I think, very often, both the parliament and the government attend to the technicalities and the process of ensuring tax legislation meets its objective without paying as much attention to its marketing and trying to make Australians understand that, unless we give our tax system our support as taxpayers, we will end up with ever-increasing tax legislation attempting to catch those who avoid tax.

Senator SHERRY (Tasmania) (9.57 p.m.)—The New Business Tax System (Taxation of Financial Arrangements) Bill (No. 1) 2003 was passed by the House of Representatives on 23 June 2003. While the government attempted to rush through the legislation without adequate parliamentary scrutiny, it was rightly referred to the Senate Economics Legislation Committee on 25 June 2003. The committee’s report was tabled on 13 August 2003. This bill was yet another example of the minister attempting to rush through technical taxation legislation without adequate parliamentary scrutiny.

Senator Coonan’s acceptance of one of the committee’s recommendations to allow taxpayers additional time to make elections under the new tax regime for foreign currency transactions illustrates the importance of parliamentary scrutiny. While the Labor opposition understand that it is often desirable for taxation legislation to be passed before the beginning of the new financial year, it is imperative that parliament be given adequate time to consider legislation. We are not here just as a rubber stamp but to debate and scrutinise the merits and effects of legislation.

The bill implements reforms proposed by the review of business taxation in 1999. The bill removes the taxing point on conversion of exchange of certain traditional securities and establishes a new regime for the taxation of foreign currency gains and losses and for the conversion of foreign currency into Australian or functional currencies. Currently, the tax law treats the conversion of certain traditional securities into ordinary shares as a sale for capital gains tax purposes. This means that, even though no sale or transfer of ownership has occurred, the investor must realise their capital gain or loss for taxation purposes. This can cause cash flow issues for the investor and reduce the ability of companies to use convertible or exchangeable securities to raise capital. Because these securities generally provide the issuing company with low debt-servicing costs in the initial phase and then capital in the later phase, they are particularly important for start-up companies. For these reasons, the Labor Party supports the provisions in schedules 1 to 3 of the bill that remove this taxing point, with the capital gains or losses to be realised when the investor disposes of the shares.

However, there are two residual issues. The first issue is it is unclear why there should not be a taxing point when securities are converted to ordinary shares of companies entirely unrelated to the company that issued the security. The extension of the measure to such transactions can only increase the likelihood of such securities being used for the purposes of deferring capital
gains tax liabilities rather than raising equity. During consultations with industry on this issue, there was no indication that exchangeable instruments are useful for equity raising by the private sector. The only example provided by the government of where exchangeable instruments have been used related to a state government privatisation. The government needs to monitor the use of exchangeable securities to ensure that no tax abuse occurs.

The second issue is the impact of this measure on the forward estimates. Because the securities covered by this measure are generally not converted to ordinary shares for four years and therefore a taxing point does not arise under the current law for this period, no revenue is forgone during the forward estimates period. However, there will be a cost to revenue in 2006-07, when the first securities covered by this measure are converted to shares and no capital gains tax is collected.

Despite several requests, Treasury has not provided any indication of the nature and size of the cost to revenue. At a time when we hear the government talk constantly about the pressures created by the ageing of the population and the importance of fiscal discipline, it is concerning that this parliament has not been provided with an estimate of the cost. While the cost of the measure may be modest, we are effectively being asked today to sign a blank cheque just because the revenue costs arise one year outside the current forward estimates period. The Labor Party supports the new taxation regime for foreign currency gains and losses outlined in schedule 4 of the bill. The new regime will address a number of uncertainties about the current treatment of foreign currency gains and losses.

Underpinning Australia’s tax system is the principle that resident entities should be taxed on their worldwide income. This requires foreign currency to be converted into Australian dollars for income tax purposes. The new provisions will introduce a general translation rule into the income tax law, which will convert foreign currency denominated amounts into Australian dollars. This will allow the Australian income tax liability to be calculated by reference to a common unit of account. The rule will cover payments, receipts, rights and obligations denominated or expressed in a foreign currency. The provisions will also allow in certain circumstances entities or parts of entities that operate predominantly in a foreign currency to determine that income or loss in that foreign currency with the net amount being converted into Australian dollars for income tax purposes.

Through the introduction of a core realisation principle, along with the translation rule, foreign currency gains and losses will be brought to account when realised, regardless of whether the conversion into Australian dollars occurs and whether it is on the revenue or capital account. In order to limit the compliance costs of the new core realisation principle, certain short-term foreign exchange gains and losses will be exempted from the provisions, with any gains or losses to be incorporated into the cost base, the purchase or realisation on sale.

Schedule 4 also introduces a simplified treatment for certain foreign currency bank accounts and optional rollover relief for issuers of certain securities under financial arrangements. These measures have an unquantifiable effect on revenue, but they are expected to be positive. Labor will be supporting the bill and will not be moving any amendments.

Mr Acting Deputy President, I seek leave to incorporate Senator Webber’s speech on

Leave granted.

Senator Webber’s incorporated speech read as follows—

The New Business Tax System (Taxation of Financial Arrangements) Bill (No.1) of 2003 contains provision for the removal of the taxing point when securities are converted into or exchanged for ordinary shares.

The Minority report of the Senate Economics Legislation Committee makes it clear that there are two outstanding issues that need to be addressed.

These issues are:

• The revenue effects in the medium to long-term, and
• The reasons for removing the taxing point on exchange of financial instruments where the exchange for ordinary shares are in a company that is neither the issuer or a related company.

These two issues need to be addressed.

There was no information in the Explanatory Memorandum to the Bill about the revenue effect of removing the taxing point at conversion or exchange.

How can we give serious consideration to a taxation bill that does not provide this important information?

This is a ridiculous situation.

The Senate is being asked to pass changes to the operation of the Taxation system but without any idea as to what it will cost.

The argument as to why there is no revenue provision is that these types of instruments do not convert or exchange for at least four years and any revenue effect would therefore fall outside the forward estimates period.

That may well be the case but surely the Government has required the Public Service to undertake some analysis of the likely revenue effect of these changes.

If that work was required why is that information not included in the Explanatory Memorandum?

It seems strange that we should consider a Taxation Bill that does not include this information.

I do accept that the explanatory memorandum did note that the removing the taxing point would have the effect of deferring the capital gains tax and such deferrals would be a cost to revenue.

So here we are being asked to pass a Taxation Bill that says that there will be a cost to revenue but the Senate cannot be told what it is.

We do not even get an estimate of any kind.

Not good enough.

The second issue that was mentioned in the Minority Report of the Economics Legislation Committee was that relating to those financial instruments where the exchange for ordinary shares is in a company that is neither the issuer or a related company.

This seems to me to be an area of some concern.

It is clear that one effect of the provisions of this taxation bill are to allow a deferral of capital gains tax.

By removing the taxing point at the time of exchange we are allowing the capital gain to be deferred.

Now I accept that there has to be some flexibility on the issue of exchange of instruments.

In fact in the Brief that was supplied from the Minister of Revenue to the Opposition the example of an exchangeable interest was that of a Sun-corp-Metway exchanging instalment note that was issued by the Queensland Government.

Clearly in this situation the issue of the instalment note by the Queensland Government is an example of where the exchange is for ordinary shares in the issuing company or a related one.

The concern of the opposition is that there exists the possibility that other instruments could be used to defer tax rather than raise capital.

Alternatively it could lead to circumstances of instruments that do not represent a continuous investment in a particular entity.

Now the Briefing note from the Revenue Minister states that the measures in this Taxation Bill are targeted and have a limited scope.

However the opposition remains concerned that the possibility exists that these provisions could
see the creation of instruments with the primary purpose not of raising new capital but of deferring capital gains tax.

Experience has shown that Taxation Law is extremely complex and that unless we have given due consideration to all the possible uses that the legislation can be put to, then we may simply be enabling the next tax rort.

The Minority Report in fact recommended that Treasury consider possible integrity measure to confine the removal of the taxing point on exchange of certain financial instruments so these provisions cannot be used for the primary purpose of deferring capital gains tax.

My view on this taxation bill is that the first issue is still the more important of the two.

When we are asked to consider a Taxation Bill that cannot even contain an indicative level of revenue either earned or lost as a result of these changes is not something that we should engage in.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.03 p.m.)—I thank my colleagues for their contributions to the debate on the New Business Tax System (Taxation of Financial Arrangements) Bill (No. 1) 2003. The measures in this bill are an integral part of the government’s ongoing commitment to reforming business taxation, so as to ensure a modern, competitive and fair tax system. In particular, they reflect the ongoing implementation of the government’s initiatives to reform the taxation of financial arrangements. The measures amend taxation legislation to remove tax barriers to the issue of traditional securities, in particular the cash flow disadvantages that can arise for investors if taxed at the time of exchange or conversion. This will improve the ability of business to raise new capital using convertible and exchangeable traditional securities by making them more attractive to investors. The bill will also promote greater certainty and consistency in the taxation of foreign currency gains and losses by removing anomalies, distortions and gaps in the current law. The reforms will also reduce ongoing compliance costs for business and serve to enhance the efficient operation and competitiveness of Australia’s business sector.

In designing this legislation, the government took into account the sometimes significant compliance costs associated with the taxation of foreign currency denominated transactions and has provided a number of options designed to reduce these costs without compromising the integrity of the measures. For example, the compliance costs of businesses with large international operations are addressed by optional functional currency rules. Under these rules, the net income or loss of an entity that functions predominantly in a particular foreign currency can, under certain circumstances, be determined in that currency with the net amount being converted into Australian dollars. Small business will benefit from the option to adopt a simplified treatment for certain foreign currency denominated bank accounts and commercial financial arrangements are recognised by providing optional rollover relief for the issuer of certain securities under financial arrangements.

The bill has, in line with the government’s commitment to effective consultation on proposed legislation, been the subject of extensive public consultation. It has been welcomed and is welcomed, so far as I understand, by both business and investors—certainly by those who talked to me about it. I also note that the bill was considered by the Senate Economics Legislation Committee and the committee recommended that the bill be passed. I take issue with Senator Sherry saying that the government has rushed through this legislation. An exposure draft legislation was released in December. There has been significant time to review it prior to the legislation being introduced and there is
certainly no intention to rush the legislation through.

I foreshadow some government amendments which will apply to elections and choices contained in schedule 4 of the bill. The amendments being moved by the government will address taxpayer representations made to the committee that additional time is required to ensure that elections and choices included in the proposed new foreign currency rules can have effect from 1 July 2003 or, in appropriate cases, another date prior to royal assent of the bill. This will ensure that taxpayers can assess the compliance cost-saving measures from 1 July 2003, as intended, and have additional time to evaluate their options and make valid elections in the first year of the new foreign currency regime.

Senator Sherry mentioned that the government had not provided estimates as to the medium- to long-term revenue effects of the amendment to remove the taxing point on the conversion or exchange. That is because there was no estimate of the financial implications outside the forward estimates period as it is difficult if not well nigh impossible to quantify. The amendment may have a negative impact on revenue due to the more concessional taxation of gains on conversion or exchange under the capital gains tax measures and due to the deferral of the taxing point until ultimate disposal of the ordinary share. However, the impact on the revenue will depend upon the extent of gains or losses made on conversion or exchange.

The main reason that it is difficult to quantify the revenue impact is that it is not possible to determine the extent of the deferral of the taxing point nor the size of the average gain or loss. To estimate the gain or loss on conversion, it is necessary to know the share price at that time and it is not possible to estimate the future price of a share. I want to disabuse the Senate of any suggestion that not providing this information was somehow or other wilful or that it would not be provided if indeed it could be estimated, and that explanation should suffice to put that at rest. This is an important plank in the government’s ongoing tax reform, in particular the business tax reforms. It is a matter that has needed attention and has been carefully developed in consultation. I commend it to the Senate.

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.10 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 14 October 2003. I seek leave to move the government amendments together.

Leave granted.

Senator COONAN—I move government amendments (1) to (24) on sheet QP220:

(1) Schedule 4, item 58, page 43 (line 5), omit “shortfall”, substitute “excess”.

(2) Schedule 4, item 58, page 45 (line 2), omit “item 7”, substitute “item 8”.

(3) Schedule 4, item 58, page 58 (lines 14 to 19), omit paragraphs 775-80(3)(a) and (b), substitute:

(a) if you were in existence at the start of the applicable commencement date:

(i) within 90 days after the applicable commencement date; or

(ii) within 30 days after the commencement of this subsection; or

(b) if you came into existence within 90 days after the start of the applicable commencement date:
(i) within 90 days after you came into existence; or
(ii) within 30 days after the commencement of this subsection; or

(4) Schedule 4, item 58, page 65 (line 11), omit “; 3, 4 or 5”, substitute “or 4”.

(5) Schedule 4, item 58, page 65 (line 19), omit “; 3, 4 and 5”, substitute “and 4”.

(6) Schedule 4, item 58, page 66 (lines 4 and 5), omit “made within 60 days after the applicable commencement date.”, substitute:
   made:
   (a) within 60 days after the applicable commencement date; or
   (b) within 30 days after the commencement of this subsection.

(7) Schedule 4, item 58, page 71 (line 25), omit “date.”, substitute “date; or”.

(8) Schedule 4, item 58, page 71 (after line 25), at the end of subsection 775-195(2), add:
   (c) within 30 days after the commencement of this subsection.

(9) Schedule 4, item 58, page 71 (lines 33 and 34), omit paragraph 775-195(4)(a), substitute:
   (a) you make a choice:
      (i) within 90 days after the applicable commencement date; or
      (ii) within 30 days after the commencement of this subsection; and
   (b) within 30 days after the commencement of this subsection.

(10) Schedule 4, item 58, page 72 (line 3), omit “began at the start of the applicable commencement date.”, substitute:
   began at whichever is the later of the following times:
   (c) the start of the applicable commencement date;
   (d) the first time you issued an "eligible security under the "facility agreement,
   (e) the specified day is included in the period:
      (i) beginning on 1 July 2003; and
      (ii) ending on the day on which the election is made;

(12) Schedule 4, item 58, page 90 (after line 6), after subsection 775-270(2), insert:
   (2A) If:
   (a) you make a choice within 30 days after the commencement of this subsection; and
   (b) the choice is expressed to have come into effect on a specified day; and
   (c) the specified day is included in the period:
      (i) beginning on 1 July 2003; and
      (ii) ending on the day on which the election is taken to have come into effect on the specified day.

(13) Schedule 4, item 59, page 98 (line 34), omit “Part 2.5”, substitute “Part 2-5”.

(14) Schedule 4, item 59, page 99 (line 3), omit “Schedule 2”, substitute “Schedule 1”.

(15) Schedule 4, item 59, page 104 (table item 1, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of that income year”, substitute “within 90 days after the beginning of that income year or within 30 days after the commencement of this section”.

(16) Schedule 4, item 59, page 104 (table item 1, 3rd column, subparagraph (b)(ii)), omit “within 90 days after you came into existence”, substitute “within 90 days after
you came into existence or within 30 days after the commencement of this section”.

(17) Schedule 4, item 59, page 104 (table item 2, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of that income year”, substitute “within 90 days after the beginning of that income year or within 30 days after the commencement of this section”.

(18) Schedule 4, item 59, page 104 (table item 2, 3rd column, subparagraph (b)(ii)), omit “within 90 days after the permanent establishment came into existence”, substitute “within 90 days after the permanent establishment came into existence or within 30 days after the commencement of this section”.

(19) Schedule 4, item 59, page 105 (table item 3, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of that income year”, substitute “within 90 days after the beginning of that income year or within 30 days after the commencement of this section”.

(20) Schedule 4, item 59, page 105 (table item 3, 3rd column, subparagraph (b)(ii)), omit “within 90 days after the offshore banking unit came into existence”, substitute “within 90 days after the offshore banking unit came into existence or within 30 days after the commencement of this section”.

(21) Schedule 4, item 59, page 106 (table item 4, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of the CFC’s statutory accounting period”, substitute “within 90 days after the beginning of the CFC’s statutory accounting period or within 30 days after the commencement of this section”.

(22) Schedule 4, item 59, page 106 (table item 4, 3rd column, subparagraph (b)(ii)), omit “within 90 days after the beginning of the CFC’s statutory accounting period”, substitute “within 90 days after the beginning of the CFC’s statutory accounting period or within 30 days after the commencement of this section”.

(23) Schedule 4, item 59, page 106 (table item 5, 3rd column), omit “within 90 days after the beginning of an income year”, substitute “within 90 days after the beginning of an income year or within 30 days after the commencement of this section”.

(24) Schedule 4, item 61, page 119 (line 2), omit “960-65”, substitute “775-105”.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (10.11 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

DEFENCE LEGISLATION AMENDMENT BILL 2003

Second Reading

Debate resumed from 28 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator CHRIS EVANS (Western Australia) (10.11 p.m.)—I rise to express Labor’s support for the Defence Legislation Amendment Bill 2003. The bill makes a number of important amendments to defence legislation. It also makes several consequential amendments to other Commonwealth legislation. The element of the bill that has naturally attracted the most attention is the proposed increase in penalties for improper use of service medals and decorations and for false representation as returned service personnel. The changes proposed in the bill reflect the gravity of the concern of service personnel, veterans and the wider community about 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 declaration for which a person is not entitled from a $200 fine to a maximum penalty of $3,300 and/or six 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 are 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 deserve strong protection from those who wrongly seek to claim the same honour and respect. For this reason, the provisions of the bill are to be welcomed and will be warmly appreciated not only by serving members of the Australian Defence Force but by our veterans. However, in welcoming these new provisions I must state for the record Labor’s serious concern that it has taken more than 18 months for the then Minister Assisting the Minister for Defence, Danna Vale, to bring these important changes to the parliament.

The bill will also make a number of changes to the military justice system. The 1997 report by the Defence Deputy Judge Advocate General and a subsequent internal review found various deficiencies with the way justice is dispensed in the military. While there are many deficiencies with the military justice system, which I will come to shortly, the amendments contained in this bill appear to represent some improvements to the Defence Force Discipline Act. The amendments include imposing a requirement for tape recording cautions given to persons in detention who are alleged to have committed a military offence. Other important amendments include ensuring that the person who orders a court martial or refers a charge to a defence magistrate cannot play any part in reviews of the findings made, transferring the power to appoint officers to act in adjudicating roles from the military chain of command to the Judge Advocate General and creating the new position of Chief Judge Advocate to assist the Judge Advocate General in performance of their duties.

While discussing the military justice changes included in the bill, I again note for the record Labor’s very serious concern about the handling of these issues more generally. Too little action to improve the justice system has occurred and what has occurred has moved at glacial speed. That has to change. That is why Labor has initiated a Senate inquiry into the effectiveness of the Australian military justice system. I have lost count of the number of former and current Australian Defence Force personnel and their families who have approached me in my office to express their concerns about the state of Australia’s military justice system. These people are not merely aggrieved individuals with an axe to grind against the Australian Defence Force. Many are genuine, well-meaning Australians who may be a parent of a current or former ADF member, a friend or other family member. All of these people have one important thing in common: they seek to improve the military justice system and break down a culture that militates against independent investigations happening in an accountable and transparent fashion. Our Defence Force has to do better. We have to get more transparency and more accountability into its military justice system. The families of young Australians who volunteer for the ADF deserve to be reassured that their children will get much better treatment
Labor strongly believes that all ADF personnel and their families are entitled to the highest standards of justice and procedural fairness in military investigations. I am pleased to indicate Labor’s support for the Defence Legislation Amendment Bill 2003. Labor has resisted the temptation to amend this bill in order to progress the medals issue, for which I know veterans have been waiting some time now. Following the Senate inquiry into military justice issues, Labor will look to legislate amendments to deliver a more accountable and transparent military justice system. But, given that this is the last week of sitting for the parliament this year, it is important that this legislation be passed and that the government delivers on the promises it made to veterans on the medals issue. Therefore, Labor has resisted the temptation to amend this legislation to pursue those most pressing, broader issues of military justice and will await the results of the Senate inquiry before progressing them. I commend this bill to the Senate and urge that it be passed.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.17 p.m.)—The Defence Legislation Amendment Bill 2003 has a number of provisions, all of which are non-controversial in their own right and have the Democrats’ support. These provisions relate to a range of measures, which Senator Evans has just outlined on behalf of the opposition. The measures include changing the titles of the Cadet Corps; the conduct of military discipline systems and defence inquiries; and, in a measure that I think will be welcomed by many, an increase in the penalties for people who falsely represent themselves as returned servicemen or women or who improperly use service decorations. Finally, the bill extends the two-year limit on the right of ex-members to apply for a home loan subsidy where someone is discharged from the Defence Force as a result of a physical or mental condition. This measure is expected to cost a minimal amount—around $79,000 a year.

The final measure, to extend the limit on the right of ex-members to apply for a home loan subsidy, relates to the Defence Home Owners Scheme. In the Democrats’ view, this aspect of the bill, which increases eligibility for the defence home loan subsidy, provides an opportunity to correct a further injustice. Presently the entitlement certificate issued by the Defence Housing Authority will only be issued in one name and therefore the property title and mortgage documents are only able to be in one name. Just today the Senate debated the issue of housing affordability. It is extremely difficult for a single person to be able to afford a house; it is quite normal for siblings, parents and children and other relationship groups to buy a house together. In the committee stage of this debate I will be moving amendments on behalf of the Democrats to extend access to the home loan assistance scheme for defence personnel in interdependent relationships, which would of course include those in same-sex relationships. The nature of the defence home loan scheme makes it perfect for this sort of initiative because the limits on who is eligible for the loan inherently limit it to significant relationships.

It is appropriate to spell out in a little bit more detail for those listening the Defence loans scheme. The Defence Home Owners Scheme assists eligible members and ex-members of the Australian Defence Force—it is to ex-members that the amendment in this bill applies—to purchase their own home by providing a subsidy on the interest of an $80,000 home loan borrowed from the approved lender. Married or de facto couples who each have an entitlement—that is, they both serve or have served in the Australian
Defence Force—may jointly apply for up to $160,000 on the one property. The requirements are five years basic full-time service unless you have operational service, which a lot more people have gained in recent times. Active and emergency reserve personnel are eligible after eight years.

Last financial year there were 6,500 recipients of the subsidy and a total of $7.4 million was paid out. The objectives of the scheme, and they are laudable, are to attract and retain Defence Force personnel, to encourage home ownership during service as a cost-effective alternative to rent allowance and to assist with the reintegration of Defence Force personnel into the community on return to civilian employment. The loan may be used to acquire a house, to complete or renovate a house already owned or to discharge an existing mortgage. Subsidy payments will not commence until the person or their family occupies the house. The person and their spouse or family cannot own any other properties.

The defence home loan subsidy recipient may include only his or her spouse, including a de facto spouse, on the title as a joint tenant. This is and has long been a point of contention. A member of the ADF in a same-sex relationship or an interdependent relationship who, not unreasonably, wants to have their partner’s name on the title cannot receive the subsidy. In a particular case where this has occurred, the Defence Force officer made representations to Minister Vale and she confirmed that the rules are governed by the act, which defines a de facto spouse as being ‘a person of the opposite sex’. The Democrats will therefore be moving amendments in the committee stage to remove this unnecessary and unjustifiable discrimination.

The equalisation of conditions in the ADF for same-sex couples lags behind the progress that has been made in the Public Service and the Department of Foreign Affairs and Trade. If the scheme is to gain its full objectives of attracting and retaining Defence Force personnel, then, particularly since the ban on gays and lesbians in the military was lifted over a decade ago, it is appropriate for those people who are now able to serve in the military to have equal treatment and not have discrimination.

There are a range of areas where members of the Defence Force in same-sex relationships are discriminated against, which include superannuation and reversionary pensions; death benefits and compensation for death and injury; access to counselling on the death of a partner; payment of relocation expenses; the services work force access program, which provides assistance with Job Search, TAFE training and transition to work programs and child-care access; and anything else covered in the Australian Defence Force entitlement manual, thanks to the exclusion of same-sex couples from the definition of ‘member with dependant’. It is an area where a number of people who are currently serving in the Australian Defence Force are subject to discrimination. They do not get access to the same entitlements as their mates whom they serve alongside. That is something that the Democrats believe is unjustifiable. Given that this legislation deals with and indeed seeks to extend the scope for ex-members to apply for a home loan subsidy under the scheme, we believe it is an appropriate time, by way of removing discrimination, to further extend that eligibility. The hurdle that needs to be overcome is simply that of a government that refuses to change in this area.

As I said before, the equalisation of conditions in the Defence Force for same-sex couples does lag behind the progress that has been made in other areas of the Public Ser-
vice and the Department of Foreign Affairs and Trade. Just a month ago, my colleague Senator Greig questioned the Minister for Defence, Senator Hill, about this issue and why there is this discrimination in a range of areas, including the areas I have just mentioned and the services work force access program. Senator Hill responded in part by saying:

It is true that there have within Defence been changes of policy in recent years to recognise de facto partners, but the benefits have not flowed to same sex partners. I think that reflects the fact that the ADF is a conservative organisation ...

The Democrats believe that the discrimination does not continue because the Defence Force is a conservative organisation; it continues because the coalition is a conservative organisation and refuses to change the law. It is an area where the law should be changed. It is an area which would benefit the operation of the defence forces and improve the attractiveness of the Defence Force and the ability of the Defence Force to retain personnel, which is meant to be one of the objectives of the Defence Home Owners Scheme.

The Democrats believe it is not only a matter of principle to remove unfair, unnecessary and unjustifiable discrimination but also a matter of strengthening the objectives of this entire scheme. That is the reason that we will move these amendments. The cost would be extremely small, and the benefits to the Defence Force would be extremely significant. I will move those amendments in the committee stage, but I thought I would elaborate on them now in the second reading stage to save time later and to indicate how they fit appropriately with the thrust of one aspect of the amendments made to this legislation. It is not the intention of the Democrats to hold up these other measures, because we do support the other measures in the bill, but it is our view—particularly with the aspect that seeks to deal with the Defence Home Owners Scheme—that it is an opportunity to make that scheme work even more fairly and more effectively in meeting the objectives that it is meant to achieve.

Senator ABETZ (Tasmania—Special Minister of State) (10.27 p.m.)—I thank the two honourable senators who took part in the second reading debate on the Defence Legislation Amendment Bill 2003 for their comments and consideration. This bill deals with a range of measures, including the improper use of service medals and decorations. I would hope and trust that everybody in this chamber would condemn the improper use of service decorations and falsely representing service personnel. It is demeaning and dishonourable to our serving and former members of the Defence Force.

I also note that part of this amendment bill will modernise the nomenclature of the Cadet Corps. That, for my part, is very pleasing. Some time ago I had the privilege of being Parliamentary Secretary to the Minister for Defence. It was during that time that we commissioned the Topley report, and it drove a number of very important reforms for the cadets. To have that recognised now in legislation, giving the cadets names that link them with the Defence discipline with which they are associated, is a step forward. It means that the cadets have now been released from what occurred after the Vietnam War, when there was a climate in this country where it was not necessarily popular to be associated with our Defence forces. As a result, names were thought of for our defence cadets to try to distance them from the defence forces. It is great to see them move back again in a very close partnership with the defence forces.

As I said earlier, I thank senators for their contributions. It is nice to know that all provisions of this bill are being supported. In relation to the amendments being foreshad-
owed by Senator Bartlett and the Australian Democrats, I can indicate that the government will oppose them.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.29 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 2961:

(1) Clause 2, page 2 (table item 8, column 1), after “26”, insert “, 26A, 26B, 26C”.

(2) Schedule 2, page 19 (after line 19), after item 26, insert:

26A Section 3 (definition of spouse)
Omit “of the opposite sex to the person”.

26B Section 3 (definition of widow)
Omit the definition, substitute:
widow, in relation to a deceased person, means the woman who was the spouse of the deceased person at the time of his or her death.

26C Section 3 (definition of widower)
Omit the definition, substitute:
widower, in relation to a deceased person, means the man who was the spouse of the deceased person at the time of his or her death.

These amendments, as I said in my speech in the second reading debate, go to amending the definition of ‘spouse’, removing the discrimination requiring that a spouse must be a person of the opposite sex. Therefore, it also requires amendments to the definition of ‘widow’ and ‘widower’ linking into that of ‘spouse’. As I said in my contribution, it seeks to remove that discrimination against same-sex couples which continues to operate and which prevents equal access to the Defence Home Owners Scheme that is dealt with in this legislation. We believe it would not only remove discrimination that is unfair, unjust and unnecessary but also make the scheme more effectively meet its objectives, which are to attract people and retain people in the defence forces. I believe the amendments deserve support. They do not cut across or in any way detract from the other aspects of the legislation—if anything, they enhance them—and I would urge the Senate to support them.

Senator CHRIS EVANS (Western Australia) (10.31 p.m.)—I received these amendments about two minutes ago, although I understand my office got a warning call that the Democrats might move in this direction. I must for the record indicate that Labor has not had a chance to look at the amendments or get any advice as to their impact or what they mean, and I think that puts me at a bit of a disadvantage. I am a bit surprised by that, because I would have thought that, if the Democrats were serious about getting Labor Party support, we would have heard from them a little earlier in the normal consultative approach that Senator Bartlett brings to such matters. Far be it from me to think there might be just a stunt involved. If he is serious about it—and I think it is a serious issue—I would expect us to be given a little more warning about how we might deal with serious amendments to serious legislation. So I am at a bit of a disadvantage—I have not had a chance to look at the amendments or analyse their impact.

As a general proposition, Labor is committed to removing discriminatory provisions in Commonwealth legislation, and certainly we would intend on the election of a Labor government doing an audit of Commonwealth legislation to attempt to remove discriminatory provisions—including those, among others, which affect same-sex couples—trying to put in place the principle that there should not be discrimination in entitlements for gay and lesbian service person-
nel. It has always been our view that it ought to be done in a comprehensive way and not in a piecemeal way and that we ought to look at all of the provisions—how they interact with social security law and other provisions.

As I say, I am at a bit of a disadvantage this evening, having had this thrust upon us at the last minute. I would be interested to hear what the government’s attitude to this is. I think I can say clearly for the record to the Democrats that we will not be holding up this bill on the basis of these last-minute amendments. Certainly I am sympathetic to the general proposition and have been involved in correspondence and talking to people affected by these issues. I indicate that I want to get some guidance on the particular amendments and take some advice, but I would be interested to hear what the government has got to say. One of the reasons why Labor has taken the view that we need to do a comprehensive audit of all such provisions is that, quite frankly, if the government does not have the political will to end the discrimination—I think a point Senator Bartlett made—and do that in a comprehensive way, the parliament trying to pick off provisions here and provisions there is a very unsatisfactory way of dealing with the issue and does not necessarily give you a very comprehensive result.

I understand there is a problem with the Defence Home Owners Scheme in terms of same-sex couples, and it is one that I am prepared to have a look at. I think the best thing to do is to hear what the government’s attitude is and hear what its rationale is for refusing the amendments. If the government is to insist on refusing the amendments, I suggest that Senator Bartlett might like to consider adjourning debate on the committee stage to allow the Labor Party to seek some guidance on what his amendments mean. At the moment I have not been able to do that. I am reluctant to agree to amendments sight unseen and advice unsought. That is the position I intend adopting at the moment. I am interested in hearing from Senator Abetz as to the government’s objection to the Democrat amendments, assuming they saw them any earlier than I did.

Senator ABETZ (Tasmania—Special Minister of State) (10.35 p.m.)—The government opposes the proposed amendments from the Australian Democrats. We were given the amendments just a matter of a few minutes ago. I do not know any financial implications et cetera. It is not government policy to support the proposed amendments; therefore, we will be opposing them.

Having said that, I believe that there are very important matters contained in this bill and those matters should not be delayed, for reasons I believe were properly put by Senator Evans. I do not want to be provocative in this, but one would have thought that, if this was a matter of some important principle for the Australian Democrats—and I will give them this; they are consistent with these types of amendments—and they were genuine on this occasion as opposed to having a quick afterthought, they would have circulated these amendments a bit earlier to allow both the government and the opposition further time to consider them. The question then is whether the very important provisions of this bill ought be delayed because of the lateness of the Democrat amendments. I would urge the Labor Party on this occasion to consider the importance of the bill and to pass it and consider the debate on the matters raised by the Democrats on another suitable occasion.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.37 p.m.)—In addition to these amendments, I also draw attention to sheet 3241, which lists alternative amendments dealing with inter-
dependency instead of same sex—a narrower definition regarding relationships.

The TEMPORARY CHAIRMAN (Senator Brandis)—Senator Bartlett, can I just clarify: at the moment you are speaking to the amendments on sheet 2961 and you have foreshadowed the amendments on sheet 3241.

Senator BARTLETT—Yes, that is right. Regarding this talk of late amendments, obviously they were only circulated recently, particularly in relation to the government’s advance notice of an intent which was provided some time back—not that I suggest that would have changed their view but I simply put that on the record. As the minister said, the Democrats are consistent in looking for opportunities to remove discrimination wherever possible. In that sense, whilst people may want to look at the technicalities of the amendments to make sure they do what we say they are going to do, the principle is hardly a new one for people to wrestle with and grasp. I would not suggest people overstate the issue of lateness, particularly when warning indications were given about the issue arising, but one could say that this legislation arriving tonight was reasonably short notice given that it was listed eighth on the Notice Paper and is not even on today’s red.

Whilst I realise these things can happen in the last week, senators would also be aware of the immensely difficult job the relevant clerk has in drafting amendments for everybody, particularly the hundreds of amendments for the higher education legislation. That tends to make it difficult to get amendments such as these to the top of the drafting list. Given that it was eighth on the Notice Paper today, the prioritisation given by the clerks to these amendments means that they deal with those amendments eighth, not first. The first on the list was the higher education legislation, which has hundreds of amendments. I imagine that senators—certainly opposition senators—would be aware of the limitations there. If the government want to provide the funds for three extra drafting clerks to provide assistance with amendments for opposition senators, that would be very welcome and then they would not have the concerns they have raised.

Just to make sure, and for future reference, I now formally notify the chamber that future defence legislation dealing with the Defence Services Home Act will, if these amendments are not successful, most likely be the subject of future amendments by the Democrats. Similarly, with the legislation dealing with the Military Compensation Scheme—as I have already outlined, an area of discrimination for people in the Defence Force—a person in a same-sex relationship whose partner gets killed in action does not get compensation and does not even get access to counselling on the death of their partner. I will make this a catch-all notification to all senators that the Democrats are likely to move amendments in that regard. Therefore, senators have maximum advance notice of that issue to ensure that all of you consider it as fulsomely as necessary at whatever time it happens to come on for debate in the Senate next year.

Senator CHRIS EVANS (Western Australia) (10.41 p.m.)—I have just been handed another page and a bit of proposed amendments which I have not even had a chance to read. In my view, Senator Bartlett’s response in asking the chamber to deal properly with amendments is not satisfactory. There was a tone of resignation in his voice. I suspect he was resigned to having them rejected. I am not prepared to deal with major amendments to a bill without having had a chance to read them. I think that is a crazy situation to be put in. So I am not going to do that. I certainly am not going to vote for them until I have had a chance to read them.
For the record, I would indicate that we have been waiting for this bill for 18 months and the government has been dragging its heels. The legislation has been sitting around. While the Democrats might want to blame the clerks, they have had plenty of opportunity to prepare for this debate. I am certainly not in a position to consider them if they are seriously moved amendments rather than amendments for stunt purposes. I certainly intend taking them seriously.

Progress reported.

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Special Minister of State) (10.44 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 6 (Legislative Instruments Bill 2003 and a related bill).

Question agreed to.

LEGISLATIVE INSTRUMENTS BILL 2003

LEGISLATIVE INSTRUMENTS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003

Second Reading

Debate resumed from 9 September, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Senator LUDWIG (Queensland) (10.45 p.m.)—I rise to speak in this cognate debate on the Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003. These bills establish a regime for the making, registration, scrutiny and sunset of Commonwealth legislative instruments. Their ultimate source is to be found in the 1992 report of the Administrative Review Council, entitled Rule making by Commonwealth agencies, which was followed by three previous versions of the legislation introduced into the parliament in 1994, 1996 and 1998.

We acknowledge that, by reintroducing the bill, the government has sought to address some concerns previously voiced by the opposition as well as concerns expressed by Commonwealth agencies about the consultation requirements contained in those earlier bills. The opposition continues to support this legislation. The most recent version of the bills has been examined by the Senate Standing Committee on Regulations and Ordinances, which had previously examined initial legislation introduced in 1994. We are grateful to the committee for its inquiry and report and acknowledge the constructive approach of the government in accepting a large number of the committee’s recommendations.

As emphasised by the opposition in the other place, if there were any doubt about the need for this legislation it was dispelled by the government’s own behaviour during the Manildra ethanol affair. There the government made two legislative instruments—the Excise Tariff Proposal No. 4 2002, under the Excise Tariff Act 1921; and the Customs Tariff Proposal No. 3 2002, under the Customs Tariff Act 1995—in complete violation of the spirit and letter of this legislation of consulting before making a significant legislative instrument which impacts on business or restricts competition.

These legislative instruments were tabled in the House of Representatives on 16 September 2002 and they came into effect at 12 a.m. on 18 September 2002, a little over 48 hours later. The Howard government announced without warning, just four days earlier on 12 September, a policy change that excise and customs duty would be imposed on imported ethanol. These legislative instruments had ‘a direct effect on business’
and ‘restricted competition’, to use the language of the Legislative Instruments Bill, and, accordingly, should have been subject to consultation. Indeed, they directly damaged businesses in Australia that sought to import ethanol. Newman Petroleum and Trafigura Fuels lost over $1 million on a shipment of ethanol that was in transit from Brazil. It directly benefited the Manildra group of companies, which has a near monopoly on domestic ethanol production, yet the only consultation the Howard government appear to have taken was the closed discussions between the Prime Minister and Mr Dick Ho-nan, the head of Manildra. These only came to light after an FOI request by Senator O’Brien. We also know of a number of frantic calls from the Australian embassy in Brazil to Trafigura, inquiring about the planned ethanol shipment. Regrettably, it seems that embassy officials forgot to mention the impending legislative instruments.

It is worth noting that the agency most directly concerned with these legislative instruments, the Australian Customs Service, in answer to a question from Senator O’Brien on 14 May this year, admitted:

Customs was not involved in consultations with companies or industry organisations prior to the imposition of the new duty rate on ethanol.

Not surprisingly, in the Sydney Morning Herald on 16 August this year, Mr Paul Moreton, the Chief Executive Officer of the Australian company Newman Petroleum described the process leading to the making of these legislative instruments as ‘perni-
cious and treacherous’. He said:

The way that they did it was absolutely meant to punish Trafigura and Neumann. They weren’t just changing the law to protect Manildra but were setting out to cause us a financial loss.

Mr Moreton was particularly justified in feeling aggrieved as he had accompanied the Minister for Trade on a trip to Tehran in early September last year, during which time no mention was made of the impending legislative instruments. In a letter to the Prime Minister on 18 September last year, literally when the instruments came into effect, Mr Moreton wrote:

There was plenty of time to warn us of your inten
tended action. Had we been advised, we would not have made the decision to import, which I may add was made in good faith and intended to develop a blended fuel market in Australia.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

The PRESIDENT—Order! It being 10.50 p.m., I propose the question:

That the Senate do now adjourn.

World AIDS Day

Senator PAYNE (New South Wales) (10.50 p.m.)—Today in the chamber, and I am sure in other parts of the parliament, a number of senators and members have worn a red ribbon on their lapels to mark that today is World AIDS Day. Three hundred small events have occurred around the country today to bring greater awareness to HIV-AIDS in an effort to dispel the stigma of the disease and to encourage testing and safe sex prac-
tices. Tonight I want to talk both about the domestic and the international challenges of HIV-AIDS.

From a domestic perspective, I note the recent words of the Minister for Health and Ageing, the Hon. Tony Abbott, at the World AIDS Day launch in Parliament House. He said that AIDS is a public health issue not a moral issue, and that diseases are to be treated not judged. I came to Senate with some experience as an activist in the field, as a former board member of the AIDS Council of New South Wales. Today I am concerned that HIV infection rates have risen in Aus-
tralia through 2002-03, the first increase in around a decade, since the mid-1990s. Ac-
According to the 2003 annual surveillance report of the Centre for HIV Epidemiology and Clinical Research, the number of HIV diagnoses was 19,674 at the end of 2002. An estimated 13,120 people were living with AIDS in Australia in 2002.

What those figures released at the end of October showed was a 17 per cent increase in the rate of newly acquired HIV infection reported in Australia. So this World AIDS Day is set against the backdrop of a seeming relaxation of attitudes towards safe sex. There is still no cure for AIDS, and prevention is the central message that comes from groups like the AIDS Council of New South Wales, the Australian Federation of AIDS Organisations and, of course, the Commonwealth Department of Health and Ageing.

I note that earlier this month, in the response to the 2002 review of the national strategies dealing with HIV-AIDS and hepatitis C, delivered by the former Minister for Health and Ageing, Senator Kay Patterson, the government committed to new strategies. As one of the contributors to that review, I am pleased that a constructive response was presented and that the government accepted the majority of the recommendations. The review drew attention to a number of issues.

Firstly, it focused on the unacceptably high levels of unsafe sex among homosexually active men and increasing outbreaks of sexually transmitted infections. In this light, it is important to find ways to re-engage with this group in a way that is as effective as the mid-1980s advertising campaign was in raising awareness.

The review looked at the issue of harm reduction approaches and the potential for the rapid spread of HIV among injecting drug users. I note that AFAO welcomes the government’s continued commitment to maintain the needle exchange program at current levels—although, of course, there are continuing points of difference on some of these matters, generally speaking.

The review’s focus on the vulnerability of the Indigenous community to HIV-AIDS is particularly important. Among Indigenous people, an almost equal proportion of HIV diagnoses was attributed to heterosexual and male homosexual contact, which is not the experience in non-Indigenous communities. A higher proportion of HIV diagnoses was associated with injecting drug use—20 per cent in Indigenous people, compared with four per cent in the non-Indigenous community. Also, the northern Queensland and Northern Territory Indigenous communities remain highly vulnerable because of the traffic between the Torres Strait and PNG.

On the issue of leadership by the Commonwealth, I welcome the acknowledgment of the need for the Commonwealth to work better and more closely with the states, territories and key community groups to ensure that prevention and health promotion strategies are as relevant to today’s social climate and the groups now at risk of infection as was previously the case. There is indeed a sense of urgency on a general level for government to act, and changing the advisory structure in this particular area is an encouraging first step.

The review also identified a lack of accountability for effort and funding at the Commonwealth, state, territory and local levels. It has been noted that the public health outcomes funding agreements have not been as effective as they might have been because of the difficulty for the Commonwealth in finding out exactly how the money is spent.

The current national strategies for HIV-AIDS and hepatitis C have some time yet to run, until June 2004. From that time, a new regime will take over which will incorporate new strategies. These will focus on preven-
tion and cooperation between all sectors, including governments, health professionals, researchers and people affected by these diseases.

What is important is that we begin now to work on the fifth national strategy. I look forward to working with Associate Professor Michael Wooldridge, the head of the HIV-AIDS and hepatitis C advisory council to the government. As senators would know, Dr Wooldridge has been involved in the fight against HIV-AIDS since the early years of the pandemic. He has an extensive knowledge of the issue and has a good record of working in partnership with the HIV-AIDS community and with people living with HIV-AIDS. I welcome both his leadership in the area as a former minister for health and the leadership that Senator Patterson showed in her capacity as minister for health in bringing these reports to fruition.

In 2001, the Declaration of Commitment on HIV/AIDS by 189 countries was a turning point in the global response to the pandemic. World AIDS Day provides us with an opportunity to take stock of what we have achieved and to renew our commitment to tackle this devastating epidemic. HIV-AIDS continues to devastate many developing nations, most particularly in Africa. Globally, 40 million people are estimated to be infected, and 14,000 new infections a day are estimated to occur. Australia, of course, is rightly focused on its leadership role in containing HIV in our region. Our concern is that the Asia-Pacific region has the devastating potential to become another epicentre of the pandemic, to in fact rival Africa. There are now more than 7.2 million people living with HIV-AIDS in the Asia-Pacific region, and about 3,000 people are newly infected each day.

Australia has worked hard to forge a regional consensus and solutions to HIV-AIDS. Two years ago, under the leadership of the Minister for Foreign Affairs, Mr Alexander Downer, we hosted a regional ministerial meeting in Melbourne at which ministers agreed on the need to develop strategies to fight HIV. They have since identified practical steps for action and have begun to establish partnerships, which include the Asia Pacific Leadership Forum on HIV/AIDS and Development. In 2000, Australia embarked on a six-year, $200 million Global AIDS Initiative. Since that initiative began, we have spent around $85 million on activities aimed at reducing HIV infection. We are now a leading donor in East Asia and the Pacific in both commitments and expenditure.

We have four main regional projects focused on HIV. There is a $9 million Asia regional HIV-AIDS project that develops a regional response in South-East and East Asia. We have committed to a new Pacific regional HIV-AIDS project that will provide support for the development and implementation of a regional HIV-AIDS strategy, including both governments and NGOs. We support UNICEF activities for young people and families—a campaign very dear to my heart as the President of the Parliamentary Association for UNICEF. We provide secretariat support for the Coalition of Asia Pacific Regional Networks on HIV/AIDS.

We also run some very important bilateral programs. We support the PNG government’s National AIDS Plan. We assist Indonesia to design and implement effective STD prevention and care strategies. We have been supporting capacity building and HIV-AIDS awareness and education projects in Vietnam. Australia has also been running targeted interventions specific to vulnerable groups in India. We have been involved in supporting an HIV-AIDS prevention and care program in China, in addressing HIV-AIDS and basic health care in Burma and in...
providing technical assistance to the East Timor Working Group on HIV/AIDS to develop medium to longer term programs. Working through Australian NGOs, focusing on both education and counselling, we also support programs for sufferers and orphan care programs in Africa. The devastating effect on orphaned children in Africa is one of the most compelling and disturbing aspects of the pandemic’s impact there. We fund two NGOs in the Lao People’s Democratic Republic for prevention and care programs for young people.

So the global responses to the HIV-AIDS pandemic still need further momentum—at least, in my view. Leadership from government, from international organisations, from the private sector and from civil society is vital. A response to the enormous challenge posed by HIV-AIDS must recognise the potential of the disease to totally devastate whole societies. Australia’s involvement in the Global Fund to fight AIDS, tuberculosis and malaria is, in my view, a very important aspect of this campaign, and a matter that I will pursue further elsewhere.

I want to particularly commend the work of AusAID, which runs excellent bilateral programs. But HIV is not just a development issue: it is economic, it is social, it is political, it is cultural, it is a security issue and it is a human rights issue—it is so much more than just a health issue. We have to have greater regional leadership, and in many ways it will come from the depth of the response in Australia. Australia has to be active at both the bilateral and the multilateral strategy levels. The leadership can come from within DFAT itself, and I think it is important that it does. The contrast between the domestic and international experience of HIV-AIDS is quite stark. But Australia is in a key position to continue to exercise leadership and to make a real impact on what happens in this region.

Cruz, Ruth

Senator MACKAY (Tasmania) (11.00 p.m.)—On 28 October, I drew the Senate’s attention to the plight of Ruth Cruz, a young woman living in my home state of Tasmania. Ruth lives with her sister Daysi Escobar in Hobart, and has done so since she came to Australia from El Salvador three years ago. When I last spoke on this matter, I told the Senate that Ruth’s application for permanent residency had been rejected by the former Minister for Immigration and Multicultural and Indigenous Affairs, Mr Ruddock, on his last day in that job.

One of the major reasons behind the rejection appeared to be a dispute over who had legal custody of Ruth: her sister Daysi or her estranged father in El Salvador. The immigration department had been unable to find a document signed in May 2001 by Ruth’s father, in which he stated that he wished Ruth to stay in the custody of her sister. The department had also apparently been unable to find Ruth’s father to determine his wishes in the absence of this document. However, the department later did find the document, coincidentally on the day after an El Salvadoran journalist—working on information provided by the Mercury newspaper—managed to find Ruth’s father, and he confirmed his intention for Daysi to have custody of Ruth. The current Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone, said in a media statement on 20 October 2003:

The issue of custody is central to this case. Ruth’s sister and her father must resolve the custody and living arrangements so that my Department can work with Ruth and her supporters to seek a resolution to the matter.

Well, the custody issue has always been resolved, but presumably, now that the department has found the missing document, Minister Vanstone will be in a position to revisit the decision made by her colleague.
Mr Ruddock. When I spoke on this issue before, I expressed my hope that the minister would choose to show some compassion for this young woman. Ruth arrived in Tasmania malnourished, anaemic, suffering from stress related asthma and with cracked ribs. She was fearful and withdrawn. Since living in Tasmania, she has regained her vitality and made many good friends—friends who, together with a range of community organisations, have formed the group Friends of Ruth.

Minister Vanstone intervened to allow Ruth to stay in Tasmania until the end of January. Friends of Ruth are calling on her to revisit the former minister’s decision and allow Ruth to stay permanently. In just three weeks, Friends of Ruth have collected the signatures of 7,470 other Tasmanians who also want Ruth to be allowed to stay. We are rapidly nearing the end of the year. This young woman has been kept waiting long enough and the uncertainty for her must end. It is time, I believe, that Minister Vanstone made her decision and I sincerely hope that she will show some real Christmas spirit and allow Ruth to stay where she will be safe and surrounded by those who care about her. In other words, I hope the minister will allow Ruth to stay in my home state of Tasmania, and it is my sincerest wish that this decision is made prior to Christmas.

I seek leave to table the document, which is not in the usual format for the tabling of petitions but is, in fact, a petition of 7,470 signatures from Tasmanians calling on Ruth Cruz to stay in Tasmania.

Leave granted.

World AIDS Day

Senator RIDGEWAY (New South Wales) (11.04 p.m.)—I also rise on the occasion of World AIDS Day, following the comments by Senator Marise Payne. I congratulate her on her comments, and I know that she has had a long interest in this particular issue and others. I also want to speak very briefly about the red ribbon that has been handed out by the Australian government, particularly the one that has been made by youth in Hohola, a community in Port Moresby in Papua New Guinea. In many respects, whilst we have the symbolic red ribbons being distributed, it is these types of things that provide income for the young people involved. However, at the same time, it is an opportunity to reflect upon the long-term future for young people and HIV-AIDS in Papua New Guinea, and it seems to be bleak.

HIV infections in Papua New Guinea were first reported in 1987, and HIV prevalence increased annually throughout the early nineties and has continued to increase. The World Health Organisation currently estimates that nearly 25,000 people in Papua New Guinea are infected with the HIV-AIDS virus. This is more than the current estimated infection rate in Australia of 22,000 people out of a population almost five times the size. The number of new cases in PNG continues to increase, due primarily to heterosexual transmission.

This is particularly concerning to me, not just for the future of young people in PNG but, as I mentioned last week, also for Torres Strait Islanders and the predominantly Indigenous gulf communities of Cape York. It may not be so obvious from the confines of this chamber just how close some Torres Strait islands are to PNG—for example, you can stand on the jetty at Saibai Island and see the coast of our nearest neighbour. There are regular crossings, contact and trade between PNG and the Torres Strait, the border area being relatively porous, particularly as a result of the Torres Strait Treaty.

Research after the fact now points to the Japanese encephalitis outbreak a few years ago in the Torres Strait as having originated.
in the Western Province of Papua New Guinea. This point was recently raised by one of the region’s leading experts on HIV-AIDS, Dr John McBride, an infectious diseases specialist at Cairns Base Hospital. They regularly treat HIV-AIDS patients from Papua New Guinea there. He also warned that Australia’s national interest is at risk if the impending epidemic in Papua New Guinea is not brought under control.

The Dolls House Sexual Health Clinic at Cairns Base Hospital is also performing invaluable work and outreach services to Indigenous communities in the northern parts of Queensland and the Torres Strait. Queensland AIDS Council’s Cairns office hosted a training program in June for a group of 17 people from PNG. Some of them were HIV positive people and others were staff or religious brothers and sisters working in the field.

The disparity of resources for HIV treatment between Australia and PNG is very marked. For example, one PNG worker told the workshop how she visited a client by boat once a month. This trip took an hour and then a walk for three hours to reach the village. I also note that the Queensland government are looking at establishing specific health centres on various islands in the Torres Strait.

We are lucky in Australia at the moment that the rates of HIV-AIDS infection among Indigenous people are relatively low and similar to the non-Indigenous population. However, the median age of diagnosis is younger and the proportion of women with the virus is much higher than in the non-Indigenous population, as is the rate of heterosexual transmission.

There are a number of successful and culturally appropriate education programs by and for Indigenous Australians dealing with HIV-AIDS. These range from the good old ‘Condoman’ with his ‘Don’t be shamed be game’ message from many years ago, through to senior traditional men overseeing initiation ceremonies in Central Australia to ensure safe practice when scarring rituals are involved, and special programs for Indigenous people in jail.

In my home state of NSW, the AIDS Council of NSW, ACON, runs the Aboriginal and Torres Strait Islander Project, which was established in recognition that Aboriginal and Torres Strait Islander people are a priority target group for HIV-AIDS prevention, education, care and support services. ACON employs three different HIV-AIDS workers for the gay, lesbian and what is called the ‘sistagirl’ communities in NSW. These and many other Indigenous specific initiatives are testimony to the perseverance of many people working in this area and, on World AIDS Day, I want to congratulate them.

Last week I spoke to the release of the ministerial statement on Australia’s Development Cooperation Program. One of the disappointing things about the ministerial statement was that, whilst on one hand it spoke about a new policy of engaging with civil society groups and more particularly non-government organisations, on the other hand it seemed to focus more on issues of security, counter-terrorism and regional stability.

I see an urgent need for a shift in focus in relation to the government’s policy priorities for Papua New Guinea. The government needs to at least establish some priorities. It is not just about dealing with economic growth in Pacific island countries; it is also about putting emphasis on things that directly affect the Australian national interest, particularly in relation to PNG, infectious diseases and people in the Torres Strait, both Aboriginal people and Torres Strait Islanders.
I can understand why the government’s preferred approach is to rely upon economic growth and good governance to drive development, reduce poverty and deliver the outcomes. Unfortunately, because economic outcomes alone are insufficient, there is a need to introduce a range of measures and more particularly to intervene in a very direct way where our own Australian interests are under threat.

I cited last week the work of Dr John McBride at Cairns Base Hospital—a hospital where HIV-AIDS patients from PNG are treated on a regular basis. I quoted that officially reported cases in PNG now numbered some 5,000 but, as I mentioned earlier, the World Health Organisation estimates under its modelling for reported and unreported cases that it is more likely that up to 25,000 people are infected.

This is particularly alarming, especially given that the existence of the Torres Strait Treaty allows the area to be used as a shared zone. In my view, if HIV-AIDS is not controlled this increases the likelihood of putting our interests as a country at risk and, more particularly, increases the possibility that the epidemic may spread to Australia’s mainland, especially taking its toll among Aboriginal people and Torres Strait Islanders.

So tonight I encourage the federal and Queensland governments to take this matter seriously. Australia’s Indigenous communities are already doing it tough and can ill afford to be confronted with a new crisis. As a nation, we responded very well to the Severe Acute Respiratory Syndrome epidemic, especially in relation to supporting the World Health Organisation to deploy experts in infection control among other things.

In our response to last week’s ministerial statement, we acknowledged our global and regional efforts to fight the threat to development posed by HIV-AIDS by the allocation of moneys to a global fund. In this case, money will only go so far. We are no longer talking about far-off destinations; we are talking about our shoreline and our shared border area. I understand that we are finalising an agreement for much closer cooperation with PNG. I hope that it deals with the HIV-AIDS epidemic more directly. I hope that it provides a direct, hands-on approach by Australians in protecting our interests.

I note the recent appointment of Dr Wooldridge to the AIDS advisory council, and I hope that he and the council are called upon in this case to provide advice, because we need to move to deal with these issues before there is a crisis on the mainland or a crisis, more particularly, among Indigenous people in the northern part of Australia. This is an obvious time to signal that message, one I hope the government can take on board.

Human Rights: Vietnam

Senator BRANDIS (Queensland) (11.14 p.m.)—This evening I want to return to a matter that I first raised in the Senate on 18 March this year, and that is the persecution of practitioners of the Buddhist religion in Vietnam—in particular, the persecution of the two most senior leaders of that religion in Vietnam, the Most Venerable Thich Huyen Quang, the Supreme Patriarch of the Unified Buddhist Church of Vietnam, and the Most Venerable Thich Quang Do, the President of the National Executive Council of that church.

The persecution in Vietnam of adherents to the Buddhist religion is one of the sad and insistent themes of the recent history of that country. I think all of us—certainly all of us over the age of about 40—will remember in the early 1960s the shocking images of the persecution by the Diem regime of Buddhists in Saigon. We remember the shocking perse-
cution, we remember the suicides, we remember the disgustingly callous reaction to those suicides by Madam Nhu and we remember the justifiable outrage felt in the West. That persecution, however, took place under the glare of television cameras. In the corrupt, deeply flawed but relatively open society of South Vietnam, as it then was, there was the opportunity to observe, to be horrified by and to be judgmental about what was happening to Buddhists at that time. Today, in the deeply flawed but closed dictatorship of Vietnam, the persecution of the Buddhist religion continues with much more vehemence and violence than was ever the case 40 years ago, but the eyes of the world are closed to it because the eyes of the world are forbidden from observing it.

When I spoke to the Senate on 18 March, I spoke of the arrest for most of the last 20 years of the two leaders of the Buddhist church, the Venerable Thich Huyen Quang and the Venerable Thich Quang Do. I am pleased to be able to tell you, Mr President, that in the months since there seems to have been something of an amelioration of the conditions. In particular, a meeting occurred some months ago between the Prime Minister of Vietnam, Phan Van Khai, and Thich Huyen Quang which raised hopes that the government of Vietnam might be persuaded to adopt a more tolerant policy towards Vietnamese Buddhists. Meanwhile, on 27 June this year, the Venerable Thich Quang Do was released from detention. So there was a period in the middle of this year when, no doubt as a result of pressure exerted by many Western governments and in many Western parliaments, the persecution to which Vietnamese Buddhists and their leaders were being subjected seemed to be abating.

Alas, more recently the news has been bad. From 16 to 19 September, the two religious leaders of whom I have spoken called a special assembly of the Unified Buddhist Church of Vietnam to reorganise its structures and to appoint a number of monks to new functions. That peaceful act—that act based upon the assumed exercise of religious freedom—brought a fresh crackdown by the authorities of the Vietnamese government. On 5 and 6 October, Thich Quang Do—who, I might mention, is a 74-year-old man—was summoned for what were described as ‘working sessions’ by the local security police and told that he must return to Ho Chi Minh City immediately. The police interfered with the assembly at the Nguyen Thieu Monastery that he and his co-religionists were in the course of presiding over.

Then, more seriously, on 8 October security police blockaded a minivan carrying Thich Quang Do and Thich Huyen Quang, together with eight other Buddhist monks, for 10 hours, triggering off a demonstration of 200 monks and 1,000 followers. The following day, on 9 October, after it had been temporarily released, the van was intercepted again by security police in Khanh Hoa. Police separated the monks and took them to different places for interrogation. Thich Quang Do was interrogated for four hours. He was then taken back against his will to the Thanh Minh Zen Monastery in Saigon. Three other monks of the Unified Buddhist Church of Vietnam—the Venerable Thich Tue Sy, Thich Thanh Huyen and Thich Nguyen Ly—were also subject to interrogations and have not yet been returned to their pagodas in Saigon. Their current whereabouts, as well as that of three lay Buddhists who were accompanying them at the time they were intercepted, are unknown. A fourth monk, Thich Vien Dinh, another Unified Buddhist Church of Vietnam official, was interrogated for six hours. He was returned to the Giac Hoa Pagoda in Saigon at midnight the following Thursday, but 10 minutes later was rearrested, and he remains in custody at the security police station in Binh
Thanh ward, Ho Chi Minh City. In the meantime, security police cut off the telephone lines to pagodas of the Buddhist Church in Saigon, Nhatrang, Binh Dinh, Quang Ngai, Quang Nam-Da Nang, Hue and Quang Tri.

Mr President, if you went down to the forecourt of Parliament House today or if you were to go down there tomorrow morning, you would have seen or you would see a peaceful, dignified and moving demonstration by Vietnamese citizens of Australia, adherents to the Buddhist faith, designed to call to the attention of the Australian parliament the persecution of their co-religionists in their native land of Vietnam. It is a matter of shame that that occurs. I want to thank those who have contributed to the public agitation of this issue in Australia, as I know others have done in the United States, the United Kingdom, the European parliament, the New Zealand parliament and elsewhere. It is only as a result of such public agitation, parliamentarians taking the place in the early part of the 21st century that the NBC news cameras took in the 1960s in exposing and making visible to the world the continued persecution of the Buddhist religion, of its leaders and of its co-religionists in the imprisoned land of Vietnam, that this issue of acute concern to so many Australian citizens can continue to be brought before the eyes of the world in the hope that the Vietnamese authorities might be persuaded—nay, dare I say, shamed—into desisting.

Senate adjourned at 11.23 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

- Farm Household Support Act—
  - Farm Help Advice Scheme Amendment 2003 (No. 1).
  - Farm Help Re-establishment Grant Scheme Amendment 2003 (No. 3).
- Product Ruling—
  - PR 2002/122 (Addendum).
  - PR 2003/69.
- Superannuation Guarantee Rulings SGR 94/4 (Addendum) and SGR 94/5 (Addendum).
- Taxation Determination—
  - TD 97/15 (Notice of Withdrawal).
  - TD 2003/28.
PROCLAMATIONS

Proclamations by His Excellency the Governor-General were tabled, notifying that he had proclaimed the following provisions of Acts to come into operation on the dates specified:

Environment and Heritage Legislation Amendment Act (No. 1) 2003—Schedule 1—1 January 2004 (Gazette No. GN 47, 26 November 2003).


Product Stewardship (Oil) Legislation Amendment Act (No. 1) 2003—Schedules 1 and 2—1 December 2003 (Gazette No. GN 47, 26 November 2003).

Workplace Relations Amendment (Fair Termination) Act 2003—Schedules 1 and 2—27 November 2003 (Gazette No. GN 47, 26 November 2003).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Commonwealth Scientific and Industrial Research Organisation: Wheat Breeds**

*(Question No. 1626)*

Senator O’Brien asked the Minister representing the Minister for Science, upon notice, on 14 July 2003:

1. Can the Minister advise the quantum of royalties earned for each of the past 8 years by the Commonwealth Scientific and Industrial Organisation (CSIRO) for each of the following breeds of wheat: (a) Lawson; (b) Brennan; (c) Gordon; (d) Dennis; (e) Patterson; (f) Rudd; (g) Tennant; (h) Mackellar.

2. Has the CSIRO modelled the expected future royalty revenue to be earned by it from the above varieties; if so, can the Minister advise for each variety: (a) the expected quantum of royalties to be paid to CSIRO; and (b) the expected time frame over which these royalties are to be paid to CSIRO.

3. Can the Minister advise how many breeds of wheat have been affected by the decision by CSIRO to destroy their wheat research crops as a result of the discovery during March 2003 of the presence of Wheat Streak Mosaic Virus (WSMV) at its research facilities.

4. For each breed of wheat affected by the above CSIRO decision, can the Minister advise: (a) the varietal name; (b) the details of the trait being developed under research (for example, higher yield, specific disease resistance, lower water usage, tolerance to saline soils, etc); (c) the projected delay in bringing the variety to commercial production as a result of CSIRO’s actions on discovering WSMV at its facilities; (d) the quantum of Commonwealth funds expended on research to date; (e) the details of extra Commonwealth funds expected to be expended on research as a result of CSIRO’s actions on discovering WSMV at its facilities; (f) the original projections of the benefit (in monetary and yield terms) to the Australian wheat industry from this research; (g) the projected delay or reduction in benefit (in monetary and yield terms) to the Australian wheat industry from this research as a result of CSIRO’s actions on discovering WSMV at its facilities; (h) the original projections of royalties to be earned by CSIRO from these varieties; and (i) the projections of the delay or reduction in royalties to be earned by CSIRO from these varieties as a result of CSIRO’s actions on discovering WSMV at its facilities.

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

1. The Commonwealth Scientific and Industrial Research Organisation has earned the following royalties for the family of Dual Purpose Long Season Wheats (Lawson, Brennan, Gordon, Dennis, Patterson, Rudd and Tennant) for each of the last eight years. There have been no commercial sales of Mackellar yet.

<table>
<thead>
<tr>
<th>Year</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995/96</td>
<td>$1,401.41</td>
</tr>
<tr>
<td>1996/97</td>
<td>$14,968.40</td>
</tr>
<tr>
<td>1997/98</td>
<td>$17,613.28</td>
</tr>
<tr>
<td>1998/99</td>
<td>$36,037.72</td>
</tr>
<tr>
<td>1999/00</td>
<td>$24,718.02</td>
</tr>
<tr>
<td>2000/01</td>
<td>$26,870.13</td>
</tr>
<tr>
<td>2001/02</td>
<td>$23,178.72</td>
</tr>
<tr>
<td>2002/03</td>
<td>$20,762.00</td>
</tr>
</tbody>
</table>
(2) CSIRO has not modelled expected future royalty revenue for these wheat varieties. Discussions are underway with the commercialising agent that may change the basis for calculating royalties and projections will depend on the outcome of these discussions.

(3) Although the destruction of all plants in CSIRO glasshouses in Canberra and numerous field experiments in NSW and the ACT impacted on research and evaluation involving wheat breeding, the main effect was on breeding lines. These are experimental and require further crossing and selection to reach the stage where they can be deemed a new variety and then handed over to the commercialising agent to bulk-up adequate seed for sale of the then new variety. An analysis of all the destroyed material and subsequent actions suggests it is possible that the commercial release of an already named variety called Glover might be delayed for one year.

(4) (a) Glover is the only named variety affected (see (3) above). It should be noted that the quantitative data below can only be broad estimates at this stage.
(b) The traits being developed are resistance to Barley Yellow Dwarf Virus combined with resistance/ tolerance to multiple other diseases and robust grain yield and quality.
(c) A possible delay of commercial release for one year.
(d) Around $1.25 million in Commonwealth funds over 12 years.
(e) CSIRO expects that there will be around $30,000 in extra Commonwealth funds expended on the development of Glover as a result of the CSIRO decision to destroy its wheat research crops.
(f) The original projections of the benefits of the release of Glover to the Australian wheat industry are around $1,000,000 per annum due to an extra 5000 tonnes of grain production at full scale commercial production, which generally occurs 3 – 5 years after commercial release. In the first year of commercial production, it is expected Glover would generate benefits of $150,000 in monetary terms and 750 extra tonnes of grain.
(g) A delay of around one year is expected. The projected delay or reduction in benefit in monetary terms is calculated at 750 extra tonnes of grain not delivered. This is valued at $150,000.
(h) CSIRO expects to earn around $54,000 per annum in royalties once Glover is in full commercial release, which is between 3 -5 years following its commercial launch.
(i) There is likely to be a delay of around one year in receipt of royalties by CSIRO as a result of the CSIRO decision to destroy its wheat research crops.

Veterans: Provision of Aged Care

(Question No. 1805)

Senator O’Brien asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 19 August 2003:

(1) What was the total amount of funding provided by the department to Victorian councils in the financial years 2001-02 and 2002-03, and budgeted for in the 2003-04 financial year, for the provision of aged care to veterans for the following services: (a) personal care; (b) domestic assistance; (c) home and garden maintenance; and (d) respite care.

(2) What was the breakdown of departmental funding provided, by council in Victoria, in the financial years 2001-02 and 2002-03 and budgeted for in the 2003-04 financial year, for the provision of aged care to veterans for the following services: (a) personal care; (b) domestic assistance; (c) home and garden maintenance; and (d) respite care.

Senator Coonan—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:
(1) (a), (b), (c) and (d) The table below shows the total amount of funding provided to Victorian councils for the provision of aged care services, through the Veterans’ Home Care (VHC) program:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Personal Care</th>
<th>Domestic Assistance</th>
<th>Home &amp; Garden Maintenance</th>
<th>Respite</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-2002</td>
<td>$557,071</td>
<td>$5,926,693</td>
<td>$455,960</td>
<td>$271,875</td>
<td>$7,211,599</td>
</tr>
<tr>
<td>2002-2003</td>
<td>$646,324</td>
<td>$8,126,815</td>
<td>$659,648</td>
<td>$449,634</td>
<td>*9,882,421</td>
</tr>
</tbody>
</table>

This funding relates only to payments made to Victorian councils. VHC contracted providers include councils, private and not for profit organisations.

Victorian assessment agencies have been allocated $15,672,315 for personal care, domestic assistance, and home and garden maintenance services in 2003-2004 and services will be allocated across all VHC contracted providers. It is only known at the end of the each financial year how much funding has been provided specifically to Victorian councils as the funding is allocated at VHC assessment agency level and then work allocated equitably by assessment agencies across all VHC contracted providers. Respite care is an entitlement for eligible veterans that is provided on an assessed needs basis within a yearly cap of 196 hours or 28 days for a combination of in-home and/or residential respite. Whilst VHC assessment agencies assess and coordinate respite care there is no allocation for these services through VHC funding. The department funds the provision of respite care services at the national level.

Note*: The funding for provision of services by Victorian Councils during 2002-2003 and 2003-2004 includes funding from the DVA Community Nursing and Respite Care programs which was coordinated through the Veterans’ Home Care (VHC) program. This funding relates to elements of respite care and community nursing that are funded from these areas but delivered through VHC.

(2) (a), (b), (c) and (d) The table below shows the breakdown of funding provided to each Victorian Council for the provision of aged care services, through the Veterans’ Home Care program for the 2001-02 and 2002-03 financial years. For 2003-04 financial year, please refer to part (1) above.

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Note: The funding for provision of services by Victorian Councils during 2002-2003 and 2003-2004 includes funding from the DVA Community Nursing and Respite Care programs which was coordinated through the Veterans’ Home Care (VHC) program. This funding relates to elements of respite care and community nursing that are funded from these areas but delivered through VHC.
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QUESTIONS ON NOTICE
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Note*: Councils with payments of $500 or less have not been individually identified due to privacy considerations and the possible identification of individual veterans.
Science: Wheat Streak Mosaic Virus
(Question No. 1945)

Senator Brown asked the Minister representing the Minister for Science, upon notice, on 10 September 2003:

With reference to wheat streak mosaic virus:

(1) Has the Commonwealth Scientific and Industrial Research Organisation or any other Australian research organisation, ever imported the virus for research or any other purpose; if so: (a) who licensed and monitored importation of the virus; (b) when was the virus imported; (c) by what means was the virus imported; (d) by what route was the virus imported and transported; (e) in which facilities is, or in which facilities was, the virus stored and used; (f) has the virus been transported to other facilities; (g) has the virus imported under OGTR/GMAC1507 been destroyed; (h) who is or was responsible for containing and managing the virus; (i) has the Office of the Gene Technology Regulation (sic) (OGTR) ever inspected, assessed or approved any facilities in which the organisms licensed under GMAC1507 are stored or used; if so, what were the results of those inspections; (j) is there any evidence that the virus may have escaped from storage or research facilities into any other environments; (k) is there any evidence that the virus, licensed by OGTR/GMAC1507 or any other research project using the virus, may be the source of infections recently identified in wheat plants in various research facilities around Australia.

(2) If the virus was used for research or other purposes in Australia, what evidence shows that this was not the source of the current infection in wheat at various locations, which threatens the Australian wheat industry.

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

(1) No. CSIRO has not imported the Wheat Streak Mosaic Virus for research or any other purpose.

   (a) See (1) above. CSIRO received a licence from the Office of the Gene Technology Regulator (GMAC licence 5607, OGTR 1507) to obtain seven viruses, including the Wheat Streak Mosaic Virus. However, of the seven viruses named in the licence, only five were obtained by CSIRO (in accordance with the terms of the licence) and used for research. Although the Brome Mosaic Virus and the Wheat Streak Mosaic Virus were named in the licence, CSIRO did not proceed with the importation of either virus, as the other five viruses were sufficient for its research.

   (b) Not applicable.

   (c) Not applicable.

   (d) Not applicable.

   (e) and (f) Although CSIRO received a licence from the OGTR to obtain seven viruses, CSIRO did not proceed with the importation of the Wheat Streak Mosaic Virus and thus did not transport the virus from overseas or within Australia, and did not store the virus at any of its facilities.

   However, on suspicion of a viral infection of plants in its Canberra laboratories in early 2003, CSIRO transported plant samples under contained conditions to laboratories in the USA (on 21 February) for testing.

   CSIRO confirmed the presence of the Wheat Streak Mosaic Virus on plants in its Canberra laboratories on 3 April 2003 following the development of a sensitive PCR test for diagnosis. CSIRO transported plant samples under contained conditions to Queensland, Western Australia and Tasmania at this time for external confirmation of the diagnosis.
CSIRO then assisted the Consultative Committee on Exotic Plant Pests and Diseases in its national delimiting survey to determine the presence of the virus in Australia. To this end, other research organisations transported plant samples under contained conditions to CSIRO’s Black Mountain laboratories in Canberra, where they were stored in its biosafety facilities.

(g) CSIRO did not import the Wheat Streak Mosaic Virus and did not store the virus at any of its facilities. However, following the development of a sensitive PCR test for diagnosis and the subsequent confirmation of the presence of the virus on plants in CSIRO’s Canberra laboratories, CSIRO destroyed all host plants at its Canberra sites, including all plant samples sent from other sites.

The National Management Group (NMG), convened by the Department of Agriculture, Fisheries and Forestry, and including representatives from State and Territory Agriculture departments, industry, Plant Health Australia and the Grains Council of Australia, agreed on Friday 30 May 2003 that based on available evidence, the Wheat Streak Mosaic Virus is established and widespread in south-eastern Australia and has been for a long time without causing noticeable production losses. The original source of the virus is unknown. The NMG also considered advice from the Australian Bureau of Agricultural and Resource Economics that the costs of eradicating the virus would be greater than the likely benefit.

(h) The National Management Group has responsibility for investigating and managing outbreaks of exotic diseases such as the Wheat Streak Mosaic Virus.

(i) All CSIRO facilities in which gene technology research is conducted are certified by the OGTR. The OGTR conducts regular inspections of CSIRO facilities and will be able to provide information about the dates and findings of its inspections of these facilities.

(j) No. As explained in the answers to (a) and (g) above, CSIRO did not import the Wheat Streak Mosaic Virus, and is not the source of the virus.

(k) No (see answers to (g) and (j) above).

(2) Not applicable (see answers to question (1) above).

Science: Wheat Streak Mosaic Virus

(Question Nos 1946 and 1947)

Senator Brown asked the Minister representing the Minister for Science, upon notice, on 10 September 2003:

With reference to wheat streak mosaic virus was the Commonwealth Scientific and Industrial Research Organisation, or any other Australian research organisation, aware of the presence of the virus in Australia prior to the 2003 outbreak at research institutions; if so: (a) which research organisations were involved; (b) when was the virus detected; (c) has the virus been researched; if so, (i) how, (ii) where to, and (iii) when was the virus transported; (e) in which facilities is, or in which facilities was, the virus stored and used; (f) has the WSMV virus been transported to other facilities; (g) has the virus been destroyed; (h) who is or was responsible for containing and managing the virus; (i) has the OGTR ever inspected, assessed or approved any facilities in which the organisms licensed under GMAC1507 (OGTR5607) are stored or used; if so, what were the results of those inspections; (j) is there any evidence that the virus may have escaped from storage or research facilities into any other environments; and (k) is there any evidence that the virus licensed by OGTR 5607/GMAC1507 or any other research project using the virus may be the source of plant infections recently identified in wheat plants in various research facilities around Australia.
Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

(1) CSIRO was not aware that the Wheat Streak Mosaic Virus was present in Australia prior to the detection of the virus in early 2003.

(a) Not applicable.

(b) Not applicable.

(c) No. CSIRO has not used the Wheat Streak Mosaic Virus in research. CSIRO received a licence from the Office of the Gene Technology Regulator (GMAC licence 5607, OGTR 1507) to obtain seven viruses, including the Wheat Streak Mosaic Virus. However, of the seven viruses named in the licence, only five were obtained by CSIRO (in accordance with the terms of the licence) and used for research. Although the Brome Mosaic Virus and the Wheat Streak Mosaic Virus were named in the licence, CSIRO did not proceed with the importation of either virus, as the other five viruses were sufficient for its research.

(d) (i), (ii), (iii), (e), (f)

Although CSIRO received a licence from the OGTR to obtain seven viruses, CSIRO did not proceed with the importation of the Wheat Streak Mosaic Virus and thus did not transport the virus from overseas or within Australia, and did not store the virus at any of its facilities. Prior to the detection of the virus on plants at various research institutions in early 2003, CSIRO was not aware of the presence of the virus in Australia.

However, on suspicion of a viral infection of plants in its Canberra laboratories in early 2003, CSIRO transported plant samples under contained conditions to laboratories in the USA (on 21 February) for testing.

CSIRO confirmed the presence of the Wheat Streak Mosaic Virus on plants in its Canberra laboratories on 3 April 2003 following the development of a sensitive PCR test for diagnosis. CSIRO transported plant samples under contained conditions to Queensland, Western Australia and Tasmania at this time for external confirmation of the diagnosis.

CSIRO then assisted the Consultative Committee on Exotic Plant Pests and Diseases in its national delimiting survey to determine the presence of the virus in Australia. To this end, other research organisations transported plant samples under contained conditions to CSIRO’s Black Mountain laboratories in Canberra, where they were stored in its biosafety facilities.

(g) CSIRO did not import the Wheat Streak Mosaic Virus and did not store the virus at any of its facilities. However, following the development of a sensitive PCR test for diagnosis and the subsequent confirmation of the presence of the virus on plants in CSIRO’s Canberra laboratories, CSIRO destroyed all host plants at its Canberra sites, including all plant samples sent from other sites.

The National Management Group (NMG), convened by the Department of Agriculture, Fisheries and Forestry, and including representatives from State and Territory Agriculture departments, industry, Plant Health Australia and the Grains Council of Australia, agreed on Friday 30 May 2003 that based on available evidence, the Wheat Streak Mosaic Virus is established and widespread in south-eastern Australia and has been for a long time without causing noticeable production losses. The original source of the virus is unknown. The NMG also considered advice from the Australian Bureau of Agricultural and Resource Economics that the costs of eradicating the virus would be greater than the likely benefit.

(h) The National Management Group has responsibility for investigating and managing outbreaks of exotic diseases such as the Wheat Streak Mosaic Virus.
(i) All CSIRO facilities in which gene technology research is conducted are certified by the OGTR. The OGTR conducts regular inspections of CSIRO facilities and will be able to provide information about the dates and findings of its inspections of these facilities.

(j) No. As explained in answers 1 (c) and 1 (g) above, CSIRO did not import the Wheat Streak Mosaic Virus, and is not the source of the virus.

(k) No—see answers 1 (g) and 1 (j) above.

Science: Wheat Streak Mosaic Virus
(Question No. 1949)

Senator Brown asked the Minister representing the Minister for Science, upon notice, on 10 September 2003:

In relation to wheat streak mosaic virus:

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

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

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

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

(1) (a) (b) CSIRO obtained a licence (GMAC licence 5607, OGTR 1507) for the use of seven viruses modified to be used as gene vectors for gene silencing in plants, to further understanding of gene function.

(2) The licence issued by the Office of the Gene Technology Regulator (GMAC licence 5607, OGTR 1507), licenses the use of seven viruses as vectors for gene silencing in plants to further understanding of gene function. It does not license research on the viruses themselves. The use of viral vectors in this way is a routine technology in several laboratories around the world.

(3) The licence mentioned above approves the use of seven viruses, including Wheat Streak Mosaic Virus (in the form of non-infectious DNA), as vectors for gene silencing in plants to further understanding of gene function.

However, of the seven viruses named in the licence, only the following five were obtained by CSIRO (in accordance with the terms of the licence) and used for research: Tobacco Mosaic Virus; Barley Yellow Dwarf Mosaic Virus; Potato Virus X; Johnson Grass Mosaic Virus; and Foxtail Mosaic Virus.

Although the Brome Mosaic Virus and Wheat Streak Mosaic Virus were also nominated in the licence, CSIRO did not obtain either virus, as the five viruses named above were sufficient for its research.
Veterans’ Affairs: Paper and Paper Products
(Question No. 2268)

Senator O’Brien asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 14 October 2003:

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

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

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

(1) The total amount spent (AUD) by the Department of Veterans’ Affairs on paper and paper products for the financial years:
   • 2001-02 was $451,672.45; and
   • 2002-03 was $507,039.79.
(2) For the financial year 2001-02, paper and paper products were sourced from the following countries:
   • Australia;
   • Austria;
   • China;
   • France;
   • Indonesia;
   • New Zealand; and
   • Thailand.
   For the financial year 2002-03, paper and paper products were sourced from the following countries:
   • Australia;
   • Austria;
   • China;
   • France;
   • Indonesia; and
   • New Zealand.
(3) For the financial year 2001-02, paper and paper products were sourced from the following companies:

- AC Cleaning Supplies;
- Australian Envelopes;
- Besley & Pike;
- Boise;
- Canon;
- Commonwealth Paper Co.;
- Corporate Express;
- Edwards Dunlop;
- Fuji Xerox;
- Kimberley Clarke;
- Ram;
- Reding Products;
- Sands & McDougall;
- Spicers Envelopes;
- Wiper Company of Australia; and
- Woolstons.

For the financial year 2002-03, paper and paper products were sourced from the following companies:

- AC Cleaning Supplies;
- Addex;
- Australian Envelopes;
- Besley & Pike;
- Boise;
- Canon;
- Commonwealth Paper Co.;
- Corporate Express;
- Fuji Xerox;
- Reding Products;
- Ram;
- Sands & McDougall;
- Spicers Envelopes;
- WC Penfolds; and
- Woolstons.

(4) The Department does not have this information.

(5) For the financial year 2001-02, the percentage of paper and paper products sourced by company is as follows:
For the financial year 2002-03, the percentage of paper and paper products sourced by company is as follows:

- AC Cleaning Supplies - 4.99%
- Australian Envelopes - 5.32%
- Besley & Pike - 2.35%
- Boise - 21.10%
- Canon - 3.45%
- Commonwealth Paper Co. - 10.00%
- Corporate Express - 35.16%
- Edwards Dunlop - 8.47%
- Fuji Xerox - 1.53%
- GSM - 0.53%
- Kimberley Clarke – 1.99%
- Reding Products - 0.05%
- Sands & McDougall - 2.88%
- Spicers Envelopes - 1.63%
- Wiper Company of Australia – 0.37%
- Woolstons - 0.18%

For the financial year 2002-03, the percentage of paper and paper products sourced by company is as follows:

- AC Cleaning Supplies - 4.01%
- Addex - 0.05%
- Australian Envelopes - 3.84%
- Besley & Pike - 1.26%
- Boise - 40.91%
- Cannon - 2.28%
- Corporate Express - 33.96%
- Fuji Xerox - 1.22%
- Paper Co. - 0.37%
- Ram - 0.20%
- Reding Products - 0.04%
- Sands & McDougall - 2.34%
- Spicers Envelopes - 1.41%
- WC Penfolds - 7.93%
- Woolstons - 0.18%

(6) For the 2001-02 and 2002–03 financial years, the Department undertook no formal steps to ensure that products sourced from other countries comply with ISO 14001. The Department is currently undertaking the implementation of an Environmental Management System that complies with ISO 14001.
**Australian Defence Force: Support for Visit by the President of the United States of America**

*(Question No. 2322)*

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 23 October 2003:

In relation to Australian Defence Force (ADF) support for the visit by the President of the United States of America George W Bush on 23 October 2003:

1. For each ADF unit and platform that was involved, either directly or by being placed on stand-by, can the following information be provided: (a) the name of the unit or platform; (b) its home base; and (c) the cost of providing the support.

2. (a) Where did the request for the ADF to provide this level of support originate; and (b) did the United States request such a high level of involvement of ADF assets.

3. (a) Who authorised this level of ADF participation; and (b) if it was authorised within Defence, by whom was it authorised.

4. (a) What were the rules of engagement for the ADF personnel and platforms involved; and (b) can a copy of the rules of engagement be provided.

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

1. (a), (b) and (c)

<table>
<thead>
<tr>
<th>Unit/Platform</th>
<th>Home Base</th>
<th>Net Additional Cost(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>($m)</td>
</tr>
<tr>
<td>2 x AS-350 Squirrel helicopters</td>
<td>Nowra</td>
<td>0.005</td>
</tr>
<tr>
<td>1 x Clearance Diving Team Element</td>
<td>Sydney</td>
<td>0.010</td>
</tr>
<tr>
<td>Tactical Assault Group (TAG) HQ, 1 x TAG Platoon, TAG liaison officer</td>
<td>Holsworthy</td>
<td>0.092</td>
</tr>
<tr>
<td>Chemical, Biological, Radiological Response (CBRR) Platoon, CBRR liaison officer, Emergency Response Squadron Detachment</td>
<td></td>
<td>0.048</td>
</tr>
<tr>
<td>4 x S-70 Black Hawk helicopters</td>
<td>Townsville</td>
<td>0.003</td>
</tr>
<tr>
<td>Land Command support forces</td>
<td>Sydney</td>
<td>0.000</td>
</tr>
<tr>
<td>8 x F/A-18 aircraft</td>
<td>Williamtown</td>
<td>0.015</td>
</tr>
<tr>
<td>1 x Control and Reporting Unit</td>
<td>Williamtown</td>
<td>0.048</td>
</tr>
<tr>
<td>Regional Correlation Centre</td>
<td>Williamtown</td>
<td>0.000</td>
</tr>
<tr>
<td>Tactical Air Operations Centre</td>
<td>Williamtown</td>
<td>0.000</td>
</tr>
<tr>
<td>Fuel tankers and crews, fire Liaison Officers, barrier team, ground operations coordination</td>
<td>Williamtown, Richmond, Amberley, Tindal</td>
<td>0.031</td>
</tr>
<tr>
<td>4 x dog teams</td>
<td>Richmond</td>
<td>0.000</td>
</tr>
<tr>
<td>Security team</td>
<td>Williamtown</td>
<td>0.009</td>
</tr>
<tr>
<td>Air Command liaison officers</td>
<td>Williamtown, Tindal, Canberra, East Sale</td>
<td>0.049</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Net Additional Cost</td>
<td></td>
<td>$0.310</td>
</tr>
</tbody>
</table>

Note 1: The net additional cost reflects the true cost to the taxpayer of undertaking a new operation and recognises that the ADF is already funded by the Government to raise, train and maintain personnel and equipment in preparation for operational contingencies.

2. (a) The Protective Security Coordination Centre. (b) Yes.

3. (a) The Prime Minister, based on a recommendation from the Attorney-General, following security recommendations from the Protective Security Coordination Centre.
(4) (a) Australian Defence Force Rules of Engagement are classified, and can not be released. (b) No.

Medicare: Bulk-Billing
(Question No. 2325)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 24 October 2003:

(1) What is the percentage of bulk-billed general practitioner (GP) unreferred attendances (by vocational registration (VR)/non-VR and total) in each federal electorate for the September 2003 quarter.

(2) For the most recent period collected, what is the average Medicare Benefits Schedule (MBS) rebate received and fee charged by full-time equivalent GPs with VR provider numbers for unreferred attendances in: (a) federal electorates; (b) across outer-urban, regional and metropolitan areas by each state; and (c) across rural, remote and metropolitan areas (RRMA).

(3) For the most recent period collected, what is the number of VR/non-VR GPs by decile percentage of: (a) services bulk-billed; and (b) services bulk-billed in RRMA 1.

(4) For the most recent period collected, what is the average MBS value per capita by residents in each electorate.

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

(1) The percentage of non-referred general practitioner attendances (by vocational registration (VR)/non-VR and total) bulk-billed in each federal electorate, for the September 2003 quarter, is as follows:

<table>
<thead>
<tr>
<th>Electorate</th>
<th>GP/VR</th>
<th>EPC</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adelaide</td>
<td>57.8%</td>
<td>96.0%</td>
<td>79.6%</td>
<td>59.2%</td>
</tr>
<tr>
<td>Aston</td>
<td>70.2%</td>
<td>98.8%</td>
<td>69.9%</td>
<td>70.3%</td>
</tr>
<tr>
<td>Ballarat</td>
<td>42.8%</td>
<td>93.0%</td>
<td>30.9%</td>
<td>42.6%</td>
</tr>
<tr>
<td>Banks</td>
<td>84.2%</td>
<td>98.7%</td>
<td>93.1%</td>
<td>84.9%</td>
</tr>
<tr>
<td>Barker</td>
<td>39.6%</td>
<td>88.0%</td>
<td>55.8%</td>
<td>39.9%</td>
</tr>
<tr>
<td>Barton</td>
<td>90.9%</td>
<td>99.1%</td>
<td>95.3%</td>
<td>91.3%</td>
</tr>
<tr>
<td>Bass</td>
<td>40.4%</td>
<td>96.3%</td>
<td>66.9%</td>
<td>41.5%</td>
</tr>
<tr>
<td>Batman</td>
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<td>98.2%</td>
<td>88.1%</td>
<td>81.8%</td>
</tr>
<tr>
<td>Bendigo</td>
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<td>95.1%</td>
<td>52.3%</td>
<td>46.8%</td>
</tr>
<tr>
<td>Bennelong</td>
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<td>80.4%</td>
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<tr>
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<td>97.9%</td>
<td>60.6%</td>
<td>58.2%</td>
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<td>Electorate</td>
<td>GP/VR</td>
<td>EPC</td>
<td>Other</td>
<td>Total</td>
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<td>Cook</td>
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<tr>
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<td>72.8%</td>
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<tr>
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</tr>
<tr>
<td>Cunningham</td>
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<td>Dickson</td>
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## Medicare - Non-Referred (GP) Attendances

### Average Fee Charged and Benefits Paid Per Full Time Equivalent Recognised GPs

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<th>Ave Fee Charged</th>
<th>Ave Benefits Paid (rebate received)</th>
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<tr>
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### Questions on Notice

- **Monday, 1 December 2003**

- **SENATE**

- **18601**

- **(2) (a)** The average fee charged by full-time equivalent recognised General Practitioners for non-referred attendances and the average Medicare Benefits Schedule (MBS) rebate received, by federal electorate, for the twelve months to 30 September 2003, is as follows:

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<td>Ballarat</td>
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QUESTIONS ON NOTICE
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<td>$208,558</td>
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<tr>
<td>Werriwa</td>
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<td>$260,239</td>
</tr>
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</table>
(b) and (c) The fee charged by full-time equivalent recognised General Practitioners for non-referred attendances and the average Medicare Benefits Schedule (MBS) rebate received, by rural, remote and metropolitan area (RRMA) classification, for the September 2003 quarter, is as follows:

MEDICARE - NON-REFERRED (GP) ATTENDANCES

AVERAGE FEE CHARGED AND BENEFITS PAID

PER FULL TIME EQUIVALENT RECOGNISED GPs

TWO MONTHS TO 30 SEPTEMBER 2003

<table>
<thead>
<tr>
<th>RRMA Classification</th>
<th>Ave Fee Charged</th>
<th>Ave Benefits Paid (rebate received)</th>
</tr>
</thead>
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<tr>
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<td>$218,686</td>
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<tr>
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<td>$211,764</td>
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<td>$184,233</td>
</tr>
<tr>
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<td>$178,623</td>
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<td>$174,761</td>
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<td>$176,088</td>
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<td>$210,123</td>
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<td>$171,552</td>
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<tr>
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<td>RRMA Classification</td>
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<td>Ave Benefits Paid (rebate received)</td>
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<td>Australia</td>
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<td>$199,464</td>
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</table>

(3) (a) The number of vocationally registered/non-vocationally registered general practitioners, by decile percentage of services bulk-billed in Australia, for the twelve months ending 30 September 2003, is as follows:
NO. OF GP PROVIDERS IN AUSTRALIA
BY % OF BULK BILLING RANGE 12 MONTHS TO 30 SEPT 2003

<table>
<thead>
<tr>
<th>Percentage Bulk Billing Range</th>
<th>Number of Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>A:100</td>
<td>1,457</td>
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<tr>
<td>B: 90-&lt;100</td>
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<tr>
<td>C: 80-&lt; 90</td>
<td>1,620</td>
</tr>
<tr>
<td>D: 70-&lt; 80</td>
<td>1,632</td>
</tr>
<tr>
<td>E: 60-&lt; 70</td>
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<tr>
<td>F: 50-&lt; 60</td>
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</tr>
<tr>
<td>G: 40-&lt; 50</td>
<td>1,703</td>
</tr>
<tr>
<td>H: 30-&lt; 40</td>
<td>1,632</td>
</tr>
<tr>
<td>I: 20-&lt; 30</td>
<td>1,735</td>
</tr>
<tr>
<td>J: 10-&lt; 20</td>
<td>1,614</td>
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<tr>
<td>K:&gt;0-&lt; 10</td>
<td>1,432</td>
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<tr>
<td>L: 0</td>
<td>2,262</td>
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<td>Total - Australia</td>
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</table>

(3) (b) the number of vocationally registered/non-vocationally registered general practitioners, by decile percentage of services bulk-billed in Rural, Remote and Metropolitan Area (RRMA) 1, for the twelve months ending 30 September 2003, is as follows:

NO. OF GP PROVIDERS IN RRMA 1 (CAPITAL CITY)
BY % OF BULK BILLING RANGE 12 MONTHS TO 30 SEPT 2003

<table>
<thead>
<tr>
<th>Percentage Bulk Billing Range</th>
<th>Number of Providers</th>
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<td>C: 80-&lt; 90</td>
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<td>D: 70-&lt; 80</td>
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<td>E: 60-&lt; 70</td>
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<tr>
<td>F: 50-&lt; 60</td>
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<tr>
<td>G: 40-&lt; 50</td>
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<tr>
<td>H: 30-&lt; 40</td>
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<tr>
<td>I: 20-&lt; 30</td>
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<tr>
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<tr>
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<td>Total – RRMA 1</td>
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(4) The Medicare Benefits expenditure per Capita for all services in the twelve months to 30 September 2003, is as follows:

MEDICARE – ALL SERVICES BENEFITS PAID PER CAPITA
12 MONTHS TO 30 SEPT 2003

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<th>Electorate</th>
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QUESTIONS ON NOTICE
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<th>Benefits per Capita</th>
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</thead>
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<td>Batman</td>
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<tr>
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<tr>
<td>Blaxland</td>
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<td>Bonython</td>
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<td>Burke</td>
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### Electorate Benefits per Capita

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**QUESTIONS ON NOTICE**
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QUESTIONS ON NOTICE
Notes to the Tables

These statistics relate to services that were rendered on a ‘fee-for-service’ basis and for which benefits were processed by the Health Insurance Commission in the September quarter 2003 (response (1) above) and in the twelve months ending 30 September 2003 (responses (2), (3) and (4) above). Excluded are details of services to public patients in hospital, to Department of Veterans’ Affairs patients and some compensation cases.

In general terms, practitioners with more than 50 per cent of Schedule fee income from non-referred attendances in the September quarter 2003, were considered to be general practitioners (3). ‘Recognised General Practitioners’ comprise fellows of the College of General Practitioners, Vocationally Registered general practitioners and general practitioner trainees (2).

The statistics in (1) relate to all non-referred (GP) attendances and are disaggregated into GP/VR services (Medicare Benefits Schedule Group A1 and related items), Enhanced Primary Care (EPC) and other non-referred attendances. These statistics are consistent with those released by the Department of Health and Ageing on 14 November 2003.

The statistics in (2) were compiled by assigning non-referred attendance recognised general practitioners full time equivalent values, and associated fee charged and benefit income, by servicing provider postcode, to electorate and rural, remote and metropolitan area (RRMA) classification.

The statistics in (3) relate to all general practitioners (not just recognised general practitioners) who had at least one service processed under Medicare in the twelve months ending 30 September 2003, and are based on major practice postcode in the September quarter 2003.

The statistics in (4) relate to Medicare benefits per capita from all areas of the Medicare Benefits Schedule.

In all tables, where a postcode overlapped federal electoral division boundaries, the statistics were allocated to an electorate having regard to statistics from the Census of Population and Housing showing the proportion of the population of the postcode in each electoral division.

Medicare statistics for some postcodes may not have been allocated to electorates if the postcodes were not listed on the Census file.

Minor differences may exist between electorate tables and RRMA tables, where postcodes could not be mapped to relevant regions.

Health and Ageing: Factor VIII and IX Working Party
(Question No. 2326)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 27 October 2003:

(1) What is the current status of the Factor VIII and IX working party.

(2) Will the Government make recombinant products available to all people with haemophilia from July 2004, as recommended by the working party; if not, why not.

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

(1) The Factor VIII and IX Working Party completed its work in April 2003 and was disbanded.

(2) On 31 July 2003, the Australian Health Ministers’ Conference (AHMC) considered a proposal for increased access to recombinant products for people with haemophilia and asked officials to undertake further urgent work.
Defence: Alternative Dispute Resolution  
(Question No. 2344)

*Senator Ludwig* asked the Minister for Defence, upon notice, on 3 November 2003:

1. Does the department use Alternative Dispute Resolution (ADR) in an effort to avoid litigation; if not, why not; if so, are there specific guidelines for the Department to follow when using ADR.
2. If the department is not using ADR provisions, what process is used in cases that require resolution.
3. Has the department been advised of any development of guidelines for the use of ADR.
4. Does any of the legislation for which the department has responsibility contain ADR procedures; if so, (a) can each relevant provision be identified (eg. by statute name and section number); and (b) are guidelines provided for the use of ADR provisions in these instances; if so, can a copy of the guidelines be provided.

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

1. Yes. Defence, through its Directorate of Alternative Dispute Resolution and Conflict Management within the Corporate Services Infrastructure Group, provides services aimed at ensuring the best practice in the use of ADR in the Defence portfolio. On 27 June 2003, Defence issued a Defence Instruction General Personnel 34-4 on the Use and Management of Alternative Dispute Resolution in Defence. Guidelines for the use of ADR in Defence include conflicts or disputes impacting the workplace and claims or potential claims against Defence and the Commonwealth by personnel or former personnel or their dependants.

Defence also, whenever appropriate in the course of litigation, initiates or participates in ADR where recommended by the Court or convening authority.

2. See (1) above.

3. Yes, through the Directorate of Alternative Dispute Resolution and Conflict Management, Defence and through on line facilities, staff have full and ready access to assistance in the application of ADR to complaints, conflicts and disputes.

4. No.

Veterans’ Affairs: Alternative Dispute Resolution  
(Question No. 2357)

*Senator Ludwig* asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 3 November 2003:

1. Does the department use Alternative Dispute Resolution (ADR) in an effort to avoid litigation; if not, why not; if so, are there specific guidelines for the Department to follow when using ADR.
2. If the department is not using ADR provisions, what process is used in cases that require resolution.
3. Has the department been advised of any development of guidelines for the use of ADR.
4. Does any of the legislation for which the department has responsibility contain ADR procedures; if so, (a) can each relevant provision be identified (eg. by statute name and section number); and (b) are guidelines provided for the use of ADR provisions in these instances; if so, can a copy of the guidelines be provided.

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

1. Where possible, the Department of Veterans’ Affairs (DVA) uses various forms of Alternative Dispute Resolution (ADR) to avoid litigation. There are no specific guidelines in place within DVA to be followed when using ADR. However, ADR is used in relation to contractual disputes with
service providers where the standard DVA contracts contain ADR clauses which require the parties to notify each other of any potential dispute and to use ADR procedures, such as mediation or conciliation, rather than arbitration or court intervention. The standard clauses in DVA contracts are:

“How will the parties manage/resolve disputes?”

Relates to clauses 7.2 [External processes] and 8.2 [Complaint handling].

**Drafting Tip** - DVA prefers the use of mediation or conciliation (as distinct from arbitration or court intervention). The following paragraphs may be helpful:

If a dispute is not resolved under clause 7.1 [Internal processes] then, as stated in clause 7.2 [External processes], the parties agree to act in good faith to endeavour to resolve the dispute using external informal dispute resolution techniques, such as mediation, expert evaluation or determination, but not arbitration.

In particular, the parties will act in good faith to endeavour to agree within 10 days (or a period agreed between them in writing, depending on the issue in dispute) about:

- the dispute resolution technique and procedures to be adopted;
- the timetable for all steps in those procedures; and
- the selection and payment of the independent person required for the agreed technique.

If the parties cannot agree as above, then they will refer the dispute to the Australian Commercial Disputes Centre (ACDC), with the object of having the dispute settled by mediation, in which case each party will bear its own costs.”

(2) In matters where ADR is not otherwise possible, DVA relies on advice from its external legal advisers (in accordance with the Appendix C to the Legal Services Directions issued by the Attorney-General under the Judiciary Act 1903) to advise on whether a dispute is appropriate to settle in accordance with legal practice and principles and the amount of any compensation that should be paid or received to settle the dispute. In relation to matters involving decisions on the granting of pensions, benefits and other pecuniary allowances under the Veterans’ Entitlements Act 1986, DVA relies on the established merit review processes, including the preliminary conference procedures contained in the General Practices Directions made by the Administrative Appeals Tribunals, to attempt to resolve matters in accordance with the legislative criteria.

(3) DVA is aware of various developments in the area of ADR including the development of national guidelines by the National Alternative Dispute Resolution Advisory Council and a meeting held by the Attorney-General’s Department concerning ADR matters and recent developments.

(4) DVA has been a leading Commonwealth agency in the development of merit review tribunals as an ADR mechanism, with the establishment of the various War Pension Entitlements Appeals Tribunals in the 1940s. The current legislation administered by DVA includes merit review processes to ensure that the correct or preferable decision is reached prior to any resort to the courts. There are no other specific ADR procedures contained in any DVA administered legislation.