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SITTING DAYS—2003

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>4, 5, 6</td>
</tr>
<tr>
<td>March</td>
<td>3, 4, 5, 6, 18, 19, 20, 24, 25, 26, 27</td>
</tr>
<tr>
<td>May</td>
<td>13, 14, 15</td>
</tr>
<tr>
<td>June</td>
<td>16, 17, 18, 19, 23, 24, 25, 26</td>
</tr>
<tr>
<td>August</td>
<td>11, 12, 13, 14, 18, 19, 20, 21</td>
</tr>
<tr>
<td>September</td>
<td>8, 9, 10, 11, 15, 16, 17, 18</td>
</tr>
<tr>
<td>October</td>
<td>7, 8, 9, 13, 14, 15, 16, 23, 24, 27, 28, 29, 30</td>
</tr>
<tr>
<td>November</td>
<td>7, 24, 25, 26, 27, 28</td>
</tr>
<tr>
<td>December</td>
<td>1, 2, 3, 4</td>
</tr>
</tbody>
</table>

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- **MELBOURNE**: 1026 AM
- **ADELAIDE**: 972 AM
- **PERTH**: 585 AM
- **HOBART**: 729 AM
- **DARWIN**: 102.5 FM
CONTENTS

TUESDAY, 2 DECEMBER

Business—
Rearrangement.............................................................................................................. 18615
Waugh, Mr Steve ............................................................................................................... 18615
Sport: Australian Davis Cup Tennis Team......................................................................... 18615
Spam Bill 2003 and
Spam (Consequential Amendments) Bill 2003—
Consideration of House of Representatives Message................................................... 18615

Business—
Rearrangement.............................................................................................................. 18625
Legislative Instruments Bill 2003 and
Legislative Instruments (Transitional Provisions and Consequential Amendments)
Bill 2003—
Second Reading............................................................................................................ 18625

Questions Without Notice—
Defence: Contracts ....................................................................................................... 18633
Australian Labor Party: Economic Policy ........................................................................ 18634
Defence: Contracts ....................................................................................................... 18635
Customs: Border Protection ............................................................................................ 18636
Research: National Policy ............................................................................................... 18637
Trade: Free Trade Agreement ......................................................................................... 18638
Customs: Security........................................................................................................... 18639
Fuel: Ethanol .................................................................................................................. 18640
Customs: Cargo Management ......................................................................................... 18641
Business: Employment ................................................................................................... 18643

Distinguished Visitors................................................................................................. 18644

Questions Without Notice—
Veterans: Home Care Program..................................................................................... 18644
Australian Security Intelligence Organisation: New Powers ........................................... 18645
Veterans: Program Funding ............................................................................................ 18646
Howard Government: Family Policy.................................................................................. 18647

Questions Without Notice: Additional Answers—
Communications: Funding ............................................................................................ 18648

Answers to Questions on Notice—
Question No. 2004........................................................................................................... 18649

Petitions—
Australian Broadcasting Corporation: Funding .............................................................. 18650
Telstra: Privatisation......................................................................................................... 18650
Education: Higher Education ........................................................................................... 18651
Medicare............................................................................................................................. 18651
Education: Higher Education ........................................................................................... 18651

Notices—
Presentation ..................................................................................................................... 18651
Postponement .................................................................................................................. 18654

Forestry: Logging—
Suspension of Standing Orders ...................................................................................... 18654

Committees—
Privileges Committee—Reference .................................................................................. 18658

Business—
Days and Hours of Meeting ........................................................................................... 18658
CONTENTS—continued

International Day for the Elimination of Violence Against Women ........................................... 18659
Trade: Free Trade Agreement ................................................................................................. 18659
Trade: Free Trade Agreement ................................................................................................. 18659
Committees—
  Rural and Regional Affairs and Transport References Committee—Extension of Time .......... 18659
  Foreign Affairs, Defence and Trade References Committee—Meeting .................................. 18660
  Membership......................................................................................................................... 18660
Documents—
  Tabling................................................................................................................................. 18660
Committees—
  Senators' Interests Committee—Report ............................................................................. 18660
  Joint Standing Committee on Public Works—Reports......................................................... 18660
Broadcasting Services Amendment (Media Ownership) Bill 2002 [No. 2]—
  First Reading ...................................................................................................................... 18664
  Second Reading ................................................................................................................. 18664
Bills Returned from the House of Representatives .................................................................. 18668
Assent .................................................................................................................................... 18668
ASIO Legislation Amendment Bill 2003—
  Referral to Committee ...................................................................................................... 18668
Notices—
  Presentation ......................................................................................................................... 18678
Committees—
  Regional Affairs and Transport Legislation Committee—Report ...................................... 18679
Business—
  Rearrangement .................................................................................................................. 18679
Taxation Laws Amendment Bill (No. 5) 2003—
  Second Reading ............................................................................................................... 18680
  In Committee ..................................................................................................................... 18688
  Third Reading .................................................................................................................... 18696
Legislative Instruments Bill 2003 and
Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003—
  In Committee .................................................................................................................... 18696
  Third Reading ................................................................................................................... 18711
Business—
  Rearrangement ................................................................................................................ 18711
Defence Legislation Amendment Bill 2003—
  In Committee .................................................................................................................... 18711
  Third Reading ................................................................................................................... 18724
Business—
  Rearrangement ................................................................................................................ 18724
Family Law Amendment Bill 2003—
  Second Reading ................................................................................................................. 18724
Business—
  Rearrangement ................................................................................................................ 18734
Age Discrimination Bill 2003 and
Age Discrimination (Consequential Provisions) Bill 2003—
  Second Reading ................................................................................................................. 18734
Adjournment—
Australian Capital Territory: Civics and Citizenship Education................................. 18745
Loh, Mr John................................................................................................................ 18747
Walkley Awards............................................................................................................ 18749
Outback Highway......................................................................................................... 18752
Special Broadcasting Service....................................................................................... 18752
Complementary and Preventative Health Care............................................................ 18755
Photonics ...................................................................................................................... 18758
Labor Party: Superannuation Policy............................................................................. 18759
World AIDS Day 2003 ................................................................................................. 18762
Documents—
Tabling........................................................................................................................ .. 18764
Tabling........................................................................................................................ .. 18765
Questions on Notice—
Treasury: Farm Management Deposit Scheme—(Question No. 957)............................. 18766
Fuel: Ethanol—(Question No. 1293)............................................................................. 18767
Pacific Islands: Global Warming—(Question No. 1621).............................................. 18767
Attorney-General’s: Corporate Branding—(Question No. 1715 amended answer).... 18769
Australian Federal Police: Investigation—(Question No. 1795)................................ 18769
Defence: Seaman Jason Solomon—(Question No. 1801)............................................ 18770
Taxation: Advertising Expenses—(Question No. 1815)............................................. 18770
Health: Ultrasound Standards—(Question No. 2017).................................................... 18771
Note Printing Australia Ltd—(Question No. 2115)...................................................... 18772
Intellectual Property Enforcement Consultative Group—(Question No. 2202).............. 18774
Treasury: Paper and Paper Products—(Question No. 2245).......................................... 18776
Medicare: Bulk-Billing—(Question No. 2314)............................................................ 18777
Defence: Point Nepean—(Question No. 2323)............................................................. 18778
Defence: Point Nepean—(Question No. 2324)............................................................. 18778
Security and Intelligence: Aluminium Tubes—(Question No. 2334)......................... 18779
Treasury: Alternative Dispute Resolution—(Question No. 2336)................................. 18780
Transport and Regional Services: Alternative Dispute Resolution—(Question No. 2341)................................................................................................................... 18781
Treasury: Alternative Dispute Resolution—(Question No. 2342)................................. 18781
Foreign Affairs and Trade: Alternative Dispute Resolution—(Question Nos 2343 and 2345)................................................................................................................... 18782
Iraq—(Question No. 2381)........................................................................................... 18783
Tuesday, 2 December 2003

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

BUSINESS
Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.31 p.m.—I move:

That consideration of government business notice of motion No. 1, relating to the hours of meeting for today, be postponed till a later hour of the day.

Question agreed to.

WAUGH, MR STEVE

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.31 p.m.—I move:

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.

Question agreed to.

SPORT: AUSTRALIAN DAVIS CUP TENNIS TEAM

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.31 p.m.—I move:

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’.

Question agreed to.

SPAM BILL 2003

Consideration of House of Representatives Message

Messages received from the House of Representatives returning the Spam Bill 2003 and the Spam (Consequential Amend-
ments) Bill 2003, acquainting the Senate that the House has disagreed to the amendments made by the Senate, and desiring the reconsideration of the amendments disagreed to by the House.

Ordered that the messages be considered in Committee of the Whole immediately.

SPAM BILL 2003

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.32 p.m.)—In relation to the Spam Bill 2003, I move:

That the committee does not insist on the Senate amendments disagreed to by the House of Representatives.

 Senator LUNDY (Australian Capital Territory) (12.32 p.m.)—Once more the Spam Bill 2003 and the Spam (Consequential Amendments) Bill 2003 come before us in this place. I would like to keep my comments relatively short but place on record my disappointment that the Howard government has chosen to reject the Senate’s opinion by voting in the House of Representatives against the very sensible amendments moved and supported in this place last week. I am disappointed because the Howard government has passed up the opportunity to engage in a constructive improvement process with the opposition and minor parties in the Senate to improve Australia’s legislative regime in relation to spam.

Labor was careful not to rewrite the government’s legislation or alter the original intention of the bills. Instead, we sought to constructively address those very significant concerns that were raised through the Senate inquiry into the legislation by members of the Internet community and other interested parties, and I believe it was clear that we were successful not only in identifying those concerns but also in drafting quality amendments which addressed and rectified the problems that arose.

As a result of the amendments supported by the Senate, the spam bills were significantly and appropriately improved and refined to address these problems. To recap, Labor’s amendments improved the bills in the following ways. They modified the search and seizure provisions contained in the Spam (Consequential Amendments) Bill 2003. This better protected the rights of Australians. The amendments improved the fairness and consistency of the exemption regime under schedule 1, clause 3 of the Spam Bill. While this provision protected the free speech of some groups, such as government bodies, political parties, religious organisations and charities, other political groups were ignored. Labor’s amendments sought to rectify this by including trade unions and not-for-profit political lobby groups. It is a particular disappointment that this amendment was not supported. It made sense, it made the bill fairer and it made the bill more consistent.

Labor’s amendments also provided a sensible amount of leeway in relation to commercial emails where the sender held a genuine belief that an intended recipient of a single email would want to receive it. Under this change, the onus was clearly on the shoulders of the sender to prove that they had a bona fide belief that their email was specifically related to an interest known to be held by the recipient. This provision could not be used by a spammer indiscriminately firing off emails. To quote comments in the Senate inquiry from the highly regarded information technology legal expert Philip Argy:

When one has received four or five copies of an email ... about how to enhance the size of a part of one’s anatomy, it is a bit hard, particularly when you have never met the person, to imagine how they are going to demonstrate a reasonably held belief that you would be interested in the content of such an email.
This is an onerous enough test to separate well-meaning users of email from the type of person that this legislation is intended to target. The government made it clear that this legislation is targeting the big end of town—those people who make money from spam and who are organised spammers. Labor is strongly of the view that our amendments strengthened this provision and removed some concerning ambiguity in relation to single emails.

Labor’s amendments also required all commercial emails for exempted organisations to have a functional unsubscribe facility. This included those protected by schedule 1 exemptions, as I said, and those commercial emails sent under the belief that the recipient would be interested in receiving them. A major concern raised during the Senate inquiry was that emails sent by exempted organisations—that is, those described as designated commercial electronic messages—were not required to have a functional unsubscribe facility. It has to be remembered that those exempted organisations under these bills are political organisations, charities, religious organisations and so forth, so they could continue to send unsolicited emails. As a result of a Labor amendment, Australians would be able to voluntarily opt out of receiving commercial emails from exempted organisations. The amendment provided a clear and very unambiguous mechanism to ensure that this was an option, so that even in situations where the sending body would otherwise be exempt, such as governments or religious organisations, people could opt out. Labor was mindful of the fact that this would not excuse anyone from any contractual obligation. It was a common-sense, very clear amendment.

The bills were also amended to tighten up another exemption—the conspicuous publication exemption to consent. This ensured that an email address found to be published conspicuously, according to the provisions of schedule 2, clause 4, would not be subject to unwarranted or unwanted commercial email in perpetuity. These amendments made desirable changes to the bill, and Labor continues to support them. As I mentioned, they reflected suggestions made in good faith by numerous interested parties that participated in the Senate inquiry into these bills. These groups included the Australian Consumers Association, Electronic Frontiers Australia, the Australian Privacy Foundation, the Internet Society of Australia and the Australian Computer Society. However, it is clear that the government has very little interest in addressing these concerns and has decided to reject these amendments. Its motives for doing so do not appear to be consistent at all. In some situations the government has claimed, incorrectly, that the amendments create loopholes in the legislation. Yet it rejected amendments which clearly serve to tighten some of the loopholes that are in fact present in the bills, such as those which required all emails to contain functional unsubscribe facilities.

Nonetheless, Labor have always believed that Australia needs anti-spam legislation. In the face of lengthy procrastination from the Howard government, we have sought and urged the timely passage of legislation such as this. We are aware that spam is rapidly on the rise around the globe. At the end of 2000 it was estimated that spam cost about $16.8 billion per year. At the end of 2003 the figure is estimated at $28.4 billion. So, given the delays already by the Howard government and the continual growing problem of spam, Labor are not prepared to hold up this legislation and we will now support it unamended by supporting the government’s motion. We sincerely hope that the concerns we have sought to have addressed never actually arise. We hope the implementation and the operation of these bills are successful. Ulti-
mately, however, this legislation will be subject to a review in two years time. That will give us the opportunity, through diligent scrutiny and monitoring during that time, to again consider the amendments that we moved this time or perhaps to consider new amendments. If spam continues to rise, or if it is unaccompanied by the necessary investment in a public education strategy to accompany this legislation, we may be dealing with new, different and challenging issues.

The issue of spam is a very complex problem. Throughout this debate a strongly held view that emerged through the Senate inquiry has been that legislation is only part of solving the problem. It will not stop spam arriving in people’s in-boxes. It will help stop spam being generated in Australia and, in particular, it will help stop the commercial motivation for spammers in this jurisdiction. There is still so much work to be done on the international stage. We hope to show, by virtue of this legislation, that it is possible for countries to look after their own patch and to show leadership to other countries. Hopefully we will see legislation of this type emerge in as many countries as possible. But, inevitably, some jurisdictions will be slack in enforcing their own laws or they will not have any, so spam will continue.

The point I am going to is that people still need to take care and to take the time to educate themselves about and to protect themselves from unwanted emails. There are a range of products and strategies that people can use to achieve this. It will take the cooperation and investment of the Internet industry to help that occur. Most of all, it will take a commitment from the government to encourage and assist people to educate themselves about the use, the effectiveness and, I suppose, the general good practice needed for doing work and communicating via the Internet.

I was quoted in this chamber some days ago by, I think, Senator Kemp, as saying that the Internet is not an evil thing. I am still of that view. There are risks and concerns because there is some very disturbing and unwanted material on the Internet. I urge people, first and foremost, to take responsibility for protecting themselves and their children against that. There is a lot the government can do, and we believe that this legislation is certainly a step in the right direction. There are so many positive things that can come from using the Internet. There is the empowerment that comes from the ability to access almost infinite amounts of information. There is the egalitarian effect from being able to access information and to communicate in a very efficient and hopefully, although not for most, in an affordable way.

With some obvious regret that our amendments have not been supported, I say to the government that we will be supporting this legislation unamended. We are sorry that the government did not take a constructive approach. I will not dwell on the government’s motivation for not doing that; I have done that previously. It is regrettable and shows a less than constructive commitment to the issue, but now I urge that we need to give this legislation a go and hope that it has the effect of limiting some of the negative effects of unsolicited emails on people’s lives. I now urge the government to make the appropriate investment in the other raft of strategies that need to accompany this bill to help people to control spam.

Senator GREIG (Western Australia) (12.45 p.m.)—Senator Lundy, on behalf of Labor, has effectively hit the unsubscribe button and is no longer interested in amending the legislation. That is a great pity because I accept that what Senator Lundy has said is true in that the amendments did go some way towards making the Spam Bill 2003 a better bill, and I genuinely believe
that. But not to insist on the amendments simply returns us to a poorer version. The great disappointment for we Democrats therefore is not that the government is rejecting the amendments, but rather that Labor is not insisting on them.

We have a situation where, to use an analogy, I wonder if people could imagine that there is a knock on their door at seven in the morning and they open the door to find a person there who wants to talk to them about gardening. The person was not invited onto the property and the owner has no particular interest in gardening. They say to that person, ‘I’m not terribly interested. I have to pay you 20c to go away because I have to pay for your solicitation and your advocacy. Here’s the 20c, but I prohibit you from coming back and annoying me at seven in the morning with your views on gardening.’ That person would then go away with your 20c and they would not return. By contrast, if at 7.30 in the morning, someone comes and knocks on the door and wants to talk to you about God and they are selling bumper stickers for the local church, you still have to give them that 20c because you have to pay for their visit but you can do nothing to prohibit them from returning. That person can come back again and again and again, knocking on your door with a commercial message about their religion and you will have to pay them to knock on your door—there being no functional unsubscribe facility in the exemptions.

I question: why have the exemptions in the first place? Why quarantine them just to three organisations? Why is it that a religious organisation, a registered political party or a charity has the right to commercial spam when no other group does? I gave examples of that in my contribution to the second reading debate in terms of the two-tier system that that sets up. To return to those briefly, I talked about a religious organisation that may want to engage in some commercial spamming for one of its causes; it may be anti-abortion or some other cause, but a women’s group or a human rights group with a differing view perhaps could not do the same. Equally, a political organisation could commercially spam the Australian community to promote whatever particular policy or ideological position it had. It could be selling T-shirts or newsletters, for example, to promote the republic as a policy idea through a political party. By contrast, the group Australians for Constitutional Monarchy could not do the same. Certainly, these other groups could use spam, if they wanted to, for general advocacy and for spamming of a non-commercial nature, but they would be prohibited from doing so within the prescription of commercial spam limited to those three groups.

I do not understand the reasoning behind that but, more importantly, we Democrats believe strongly that, as a party and reflecting what we believe to be the wider Australian community attitude, all spam should be banned as best as it can be. We accept that some for legitimate reasons could not or it might be difficult to do so. We understand, for example, the exceptions or provisions for a university which may want to communicate via email to its former students. We understand, for example, a banking institution or a financial institution wanting to communicate to customers or potential customers in terms of those people in whom an interest could be identified in receiving such information. We can understand that. But it makes absolutely no sense to us as to why the government would delineate between commercial and non-commercial spam in the way that has been done. We believe that all spam—irrespective of what it might be proposing, promoting or advocating—should be banned. It is unsolicited; it is unwanted; it is annoying.
We also remain particularly concerned about the search and seizure provisions within the bill. It is our belief that under the bill, which will become law, the authorities could, without the permission of the owner, enter premises and remove a computer for something as innocent as receiving spam. We believe that is a consequence of some of the clumsy drafting in the legislation. We believe that because, in the wording of the bill, ‘a thing’ that is connected with a breach of the spam act is anything that may afford evidence about the breach and that could quite readily be a spam email received. Secondly, a search or a seizure of property can occur without the owner’s permission. The bill only requires that ACA inspectors get permission from the occupier, whoever that may be, and that could include a flatmate, a relative or a landowner. Thirdly, in the event of a search warrant being issued, the owner need not be present. That can fall to the occupier or to someone apparently representing the occupier.

I have had many, as I am sure other senators have had, emails expressing what we Democrats have echoed are concerns and issues with the bill. We moved, as did Labor, the raft of amendments to the bill which we believe would have addressed the community issues, community concern, and the issues raised by both the opposition and the Australian Democrats. But they have not been accepted by the government and they have now been rejected by the House of Representatives. Labor has made it clear that they will not be insisting on the amendments and that means that the original bill will pass in toto. That is regrettable not because the foundations of the bill are wrong—they are not. The principle behind it is good and I commend the government again for finally moving on this legislation. It is legislation the likes of which I have been calling for for at least two years. But I think we could have, to extend the analogy, done a bit of renovating on the house that sits on the foundations and made it a better bill. The only salvation is that there is a mandated review after two years. It is from there that the next parliament, post the next election, will have the opportunity to review what will become law and to work out what is and is not working and will be given the opportunity to fix it where that might be required.

I am conscious of the fact that, while I have railed strongly against proposals for religious organisations, political parties and charity groups to continue or to initiate commercial spam, there is very little of that currently happening. There is very little evidence that there is commercial spam coming from those three sectors, but it does worry me, particularly with political organisations and religious institutions, that that will increase. I note the recent article in the Bulletin magazine in Australia released this week or last, which talks in detail about growth of spam in those sectors. It worries me that there is a suggestion that future spamming, both commercial and non-commercial, is going to be on the increase. Having said that, I wonder if the balance to that is not, as Senator Lundy has suggested, the community’s response and reaction to it. My instinct is that most people are annoyed and concerned by spam, and I think there will be a considerable backlash against those organisations which persistently use it as a method of unwanted communications. I do not know that it would be in a political party’s interests to spam people with policy or advocacy for their particular causes. I think that is more likely to lose you votes than gain them, but that remains to be seen.

Senator Lundy is right to say that ultimately education and filtering devices are part of a better solution. I would like to see the government doing more in that area and I commend the work of NetAlert; however, I
would like to see NetAlert re-formed, better resourced and better funded, and perhaps even renamed to something less alarmist. I think the name of the organisation tends to suggest to the community that the Internet is something we should be alarmed about; it is not, it is something we should have an understanding of. I fully support the right and opportunity for better resourcing for parents and guardians to enable them to advise and guide their children and those in their care as to how to engage with the Internet. There are far more wonderful things on the Internet than there are nasties, and the same is true of other media. Of course filters are not a panacea; they too have their flaws. We still live in a community and in an age where many people are unsure about how to use them.

Ultimately, we Democrats feel that, whether you are dealing with offensive material on the Internet, sexually explicit material on the Internet or spam on the Internet, it is the end user who takes the responsibility for recognising it, understanding it, knowing how to deal with it, knowing how to reject it and knowing how to educate the children in their care in the same responses. It is equally the case with spam. However, this bill, now to become law, is two steps forward and one step back. It complements a growing global trend as an international response to spam. It is not as good as it could or should have been; I do regret the failure of the amendments. I genuinely believe they improved on the bill, but this bill will now pass and we wish it a fair sailing. In two years time my colleagues and I will have the opportunity, with others, to review it, and my words will come back either to haunt me or support me. Then we will see if we can produce a better bill for the Australian community.

Senator KEMP (Victoria—Minister for the Arts and Sport) (12.56 p.m.)—In reference to comments Senator Greig made in his speech I think that, rather than hitting the unsubscribe button, the Labor Party has instead opted-in for protecting Australians from unwanted and inappropriate electronic messages, and we appreciate the decision the Labor Party has made. Before we began this process, the idea that one could develop a package that could garner the support of both the Australian Direct Marketing Association on the one hand and the Internet Industry Association on the other would have seemed almost laughable to many people. Many people said that effective antispam legislation was too hard or even impossible. By consulting widely with these and many other groups, we have managed to achieve just that. My advisers have drawn my attention to the antispam bill which is currently proceeding through the US Congress, and I think that a fair comparison between the two would suggest that this bill in Australia is likely to be seen to be more effective at combating unwanted messages than that bill which is going through the US Congress.

I believe we have developed a package that balances the needs of consumers and the community with the needs of legitimate business, and it gives consumers real control of what they consent to receive. We have finetuned the package as we received feedback, and that has produced what I believe to be a very workable package of measures that we have brought to the parliament. The Spam Bill provides an effective and coherent approach to the problem of spam, providing a strong consent based regime, with a narrow, closely defined safety net of exemptions. If the amendments previously proposed were to have passed, they would have changed the legislation to something the government believes would have been inconsistent with and would have substantially weakened the core policy principle of the spam bill—the principle of consent.

Senator Lundy suggested that it is the government’s view that the legislation is per-
fect and immune to the need for improvements. I can tell Senator Lundy that the truth is that we recognise that, in the course of the operation of the legislation, opportunities to improve it may well come to light. We have included the two-year review provision so the legislation can be improved by the experience of its operation in the real world. You will not hear the government state that the legislation is perfect, nor that it will end the spam problem in Australia. The government would, however, say that the legislation as it currently stands is probably the best package of measures that can be provided to address the aim of reducing spam.

I appreciate that Labor and the Democrats have expressed concerns over the search and seizure provisions of the Spam (Consequential Amendments) Bill, and they have moved a number of amendments to address perceived shortcomings, often in respect of particular envisaged scenarios. The government appreciated the intent of the amendments but considered they failed to take in the wider range of possible scenarios that the search provisions would need to address. Additionally, the amendments appeared to have been drafted in terms of a bill that was isolated from Australia’s other laws, established practices and interpretations. The spam bills, when enacted, will fit into a constellation of other laws and documented procedures which will ensure their appropriate and effective enforcement and the best possible protection of Australian individuals’ and businesses’ interests.

We appreciate there are many other ways that the legislation could have been framed and a range of issues which other parties and groups have regarding the provision of these bills. There may be some issues worthy of further exploration but there are none which need to be immediately resolved. If any issues make themselves apparent in the first years of the legislation’s operation, as I have already stated, these can be considered in the scheduled review. The development of the total legislative package will not cease with the passage of these bills as associated regulations will need to be developed.

During the development of these bills, we provided briefings on the legislation to both the Democrats and Labor. In the spirit of cooperation, I would like to extend the offer to do the same during the development of the regulations. I understand Senator Lundy has indicated they will support the passage of the bills unamended, and I support this pragmatic attitude. Antispam legislation has wide public support both in Australia and internationally. Quick passage of the legislation will now allow the ACA and NOIE to get on with the job of working with industry, the public and the international community to deal with this issue.

In closing, I would like to thank the many people and organisations who have so generously contributed their time and effort to take this package from conception to delivery. I believe Senator Alston, in particular, deserves our thanks for recognising that spam is a problem and shepherding this proposal into parliament. The National Office for the Information Economy, the Australian Communications Authority and the department have all cooperated magnificently to develop such a package, in a comparatively short period of time. Other organisations are really too numerous to mention in total but include such groups as the Australian Direct Marketing Association, the Internet Industry Association, the Coalition Against Unsolicited Bulk Email, the Australian Chamber of Commerce and Industry, the Australian Consumers Association and the Australian Information Industry Association—and many others could be mentioned in such a list. In her remarks, Senator Lundy drew attention to a quotation that I had apparently given. In all fairness that was not the full quotation; there
were other aspects of that quotation which, I have to say, do continue to give us some concern, but that is a debate for another day. I commend these bills to the Senate.

Senator HARRADINE (Tasmania) (1.02 p.m.)—I had my television on in background while I was doing other work in my office and I heard Senator Greig mention—if I am wrong, I know he will correct me—that NetAlert should be renamed in a way which is less threatening. We all ought to be on the alert right here and now. Last week, I mentioned a situation where young children were brought to the Canberra Hospital for assessment as a number of them had been exposed to pornographic material on the Internet and were acting it out on younger children. Children as young as 10 years old have been acting out what they see on the Internet upon younger children—attempted intercourse and other sexual activities. What are we doing to our children if we are not alerted to that and doing something about it? I ask Senator Lundy: what is she going to do about it? It is a dreadful situation, the details of which were revealed recently at a conference in Sydney.

Researchers have indicated that this is becoming a greater and greater problem. We all sit here and say, ‘Let’s change the name of NetAlert to something more fitting.’ Let us first of all do something about the exploitation of these children. It was properly described by the professionals as child sex abuse. Are we going to be labelled as child sex abusers because we are doing nothing to protect those young children? You might say, as NetAlert has said, ‘Oh, it is the responsibility of the parents.’ You are not in the real world if you just simply leave it in the hands of parents or those who are supposedly looking after the children.

In this day and age, a whole lot of single parents are working their guts out to earn money for their family, to pay the rent and to get food. They are working late hours to do this, and their children are at home alone. So many cases of this are evident. We have been told again by the professionals that something has to be done. The Internet service providers, the ISPs, are making money out of this. They say, ‘No, no, no; we are not the content provider.’ But they are providing that material to a person’s home as a so-called service. They have a responsibility because, every time that material goes into the home, they are collecting their service fee. Internet service providers must take more responsibility for what is going through their servers into the home. I agree with the minister that Senator Alston had a lot to do with this particular legislation. Prior to his leaving the portfolio, he stated that the time had come for Internet service providers to accept some sort of responsibility.

There is a need to concentrate on developing filtering systems which will be effective. Obviously, we need to have those sorts of filtering systems that do not cause great latency, which would be a problem for the normal viewer. Where there are technological problems, there are technological solutions. Where there is broadband, there should not be such a latency problem. There needs to be goodwill and action taken to ensure that these filtering devices are effective and easily operated. In my view, the ISPs have a responsibility to provide filtering programs to their customers free of charge. What is wrong with that? They are making the money. Aren’t they prepared to provide a situation whereby some sort of assistance can be given to those families who do not have people on constant watch over their children?

What of the dysfunctional families from which a number of these children come? Should they be condemned? Should there not be some action taken by the ISPs to provide
filtering systems? Can we leave it any longer to do something about it? These issues were raised by the Canberra Hospital. I again ask Senator Lundy what she is going to do about it. What is the government going to do about it? It is all very well to say, ‘We have an online system operating.’ Obviously it does not work in these particular areas. It is not working. There needs to be coordinated action taken, particularly when the professionals have said that this is child sex abuse. I am not going to be part of that. We have to take responsibility for the children who are so affected and exploited.

I know that this legislation does not cover this, but pornographic material is coming into the home unsolicited. In fact, a recent survey was done again in Canberra which found that the figure for those young people aged 16 and 17 who were exposed to unwanted Internet pornography was something of the order of 84 per cent. What are we going to do about that? The girls’ situation was around 60 per cent. I can get the correct figures; I have quoted them here in the parliament before. In the light of this, what are we going to do?

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.13 p.m.)—I just want to respond to some of the matters that have been raised by Senator Harradine. Firstly, we do not propose to change the name of NetAlert. That is the name that it has, and there is no proposal that we are aware of or that we would support to change that name. Secondly, we have funded NetAlert for three more years. Thirdly, we have refocused the organisation to deal particularly with the dangers to children. To wrap up the last part of your remarks, Senator Harradine, you asked a question of the parliament about this particular issue. I indicated that Minister Williams is carefully considering a review which deals with a range of issues, including some of those issues which are of particular concern to all of us here. We hope to have an early response from the minister perhaps in the new year. We are very happy to provide you with a full briefing on that review and the decisions by the minister to that particular review. I might leave it there as I know that the Senate is anxious to proceed with a number of other bills.

Question put:
That the motion (Senator Kemp’s) be agreed to.

The committee divided. [1.18 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes……….. 41
Noes……….. 9
Majority…… 32

AYES
Barnett, G. Bishop, T.M.
Brandis, G.H. Buckland, G.
Campbell, G. Campbell, I.G.
Carr, K.J. Chapman, H.G.P.
Collins, J.M.A. Cook, P.F.S.
Crossin, P.M. Evans, C.V.
Ferguson, A.B. Forshaw, M.G.
Harradine, B. Harris, L.
Hogg, J.J. Hutchins, S.P.
Kemp, C.R. Kirk, L.
Lees, M.H. Lightfoot, P.R.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Mackay, S.M.
Marshall, G. Mason, B.J.
McGauran, J.J.J. * McLucas, J.E.
O’Brien, K.W.K. Payne, M.A.
Scullion, N.G. Sherry, N.J.
Stephens, U. Tchen, T.
Tierney, J.W. Troeth, J.M.
Watson, J.O.W. Webber, R.
Wong, P.

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

* denotes teller
SPAM (CONSEQUENTIAL AMENDMENTS) BILL 2003

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.22 p.m.)—In relation to the Spam (Consequential Amendments) Bill 2003, I move:

That the committee does not insist on the Senate amendments disagreed to by the House of Representatives.

Question agreed to.

Resolution reported; report adopted.

Senator GREIG (Western Australia) (1.24 p.m.)—To save the Senate time, I do not propose that there be another division but I ask that Hansard clearly record that the Democrats supported the amendments and oppose the adoption of the message.

BUSINESS REARRANGEMENT

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.24 p.m.)—I move:

That intervening business be postponed until after consideration of government business order of the day No. 6, the Legislative Instruments Bill 2003 and related bill.

Question agreed to.

LEGISLATIVE INSTRUMENTS BILL 2003

LEGISLATIVE INSTRUMENTS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003

Second Reading

Debate resumed from 1 December, on motion by Senator Ian Campbell:

That these bills be now read a second time.

Senator LUDWIG (Queensland) (1.25 p.m.)—I am pleased to resume my contribution to this debate on the Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003, particularly after the message in relation to the spam legislation has just been resolved. The opposition has emphasised throughout this debate that these bills are sorely needed. I know you, Mr Acting Deputy President Marshall, participated in the inquiry by the Senate Standing Committee on Regulations and Ordinances, so I am sure you are in a position to agree with that. The legislation is needed to raise the appalling standards, such as those displayed by the Howard government in the Manildra ethanol affair, with respect to consulting with affected interests before making significant delegated legislation.

A number of aspects of this legislation merit comment, particularly in light of the Senate committee report and the government’s response to it. Firstly, with respect to the conclusive certificates, there has previously been some controversy about the power of the Attorney-General to certify whether or not an instrument is legislative in cases of uncertainty. As the opposition made clear in the other place, in the interest of facilitating the passage of this legislation we are prepared to accept the mechanism of judicial review as an accountability check on the exercise of this power by the Attorney-General. We do so on the basis that, if the court in an application for judicial review were to reach a different legal conclusion from the Attorney-General as to whether or not an instrument is legislative, it is difficult to see how the Attorney-General could act, in truth, inconsistently with the court’s conclusion. The Senate committee recommended that it be made clear in the bill that any subsequent certificate issued by the Attorney-General to certify whether or not an instrument is legislative is subject to judicial review. We acknowledge that the government will be moving an amendment to implement that recommendation.

Secondly, consultation is a contentious subject. Here the main concerns were not so
much those of parliament but those of government agencies, who have obviously very effectively lobbied the former Attorney-General, Mr Williams, to replace the mandatory consultation provisions in the earlier bills with the mechanism in the current bills. The Senate committee noted that the current mechanism is weaker and provides for limited accountability for a failure to consult but took the view that, in light of the long history of this bill, the mechanism should be given an opportunity to work.

The proof of the pudding will be in the eating. The committee recommended that the operation of the consultation provisions and the regulatory impact statement process be included in the review of the act in three years time. Ministers, and the agencies for which they are responsible, are effectively put on notice that if the consultation mechanisms prove to be wholly ineffective there will inevitably be calls for them to be strengthened. For example, we note that the bill now proposes an indicative list of circumstances in which a rule maker may be satisfied that consultation may be inappropriate. There will be no surer way to seal the doom of the consultation provisions than if rule makers make a practice of justifying the failure to consult by including a bare reference in their explanatory statement to one of the paragraphs in clause 18 of the bill. In the Manildra ethanol affair, for instance, the Howard government plainly regarded it as urgent to introduce the legislative instruments imposing customs and excise duty, because it was intent on helping out Manildra by sabotaging the ethanol shipment from Brazil before it arrived. Plainly, such a contrived urgency should not be used to justify a failure to consult other Australian businesses which are about to sustain economic damage as a result of the Howard government’s Manildra-friendly policies.

I turn to another area of contention in previous debates. This relates to the exemptions in the bill from various mechanisms in the bill—in other words, an exemption process. There will be further debate on these exemptions at the committee stage, but in general, given the tortuous history of this legislation, the opposition thinks it should be given an opportunity to work and will not be seeking at this point in time to add to or subtract from the exemptions in the bill.

An exemption of some controversy has been that which renders instruments made under legislation which forms part of an intergovernmental scheme non-disallowable unless that scheme legislation provides otherwise. It is a bit Pythonesque, I suspect. The Senate committee noted longstanding concerns with this exemption and recommended that parliament be notified each time a bill which establishes or amends a national scheme provides for the making of legislative instruments and whether such instruments are to be disallowable. Again, we acknowledge that the government has accepted the committee’s recommendations and that the Attorney-General’s Department has undertaken to liaise with the Department of the Prime Minister and Cabinet to have this requirement included in the legislation handbook for notification to all ministers.

In relation to the drafting of legislative instruments, the bill requires the Secretary of the Attorney-General’s Department to cause steps to be taken to promote the legal effectiveness, clarity and intelligibility of legislative instruments. The secretary must also cause steps to be taken to prevent the inappropriate use of gender specific language, and the parliament must be notified of any occasions where existing instruments are found to contain inappropriate gender specific language. We are pleased that the government has picked up that recommendation.
of the Senate in debate on previous versions of the legislation.

The bill also formally establishes the Federal Register of Legislative Instruments, which will be publicly accessible via the Internet and maintained by the Attorney-General’s Department. In reality the department has maintained a federal legislative instruments database for some years, which will now be significantly enhanced and given statutory authority. Any legislative instrument made after the commencement of the bill must be registered to be enforceable, and the register must also contain explanatory statements and the compilation of legislative instruments. There is also a mechanism for back-capturing existing legislative instruments for inclusion in the register.

Effectively, a one-stop shop will be created for legislative instruments, making it much easier for individuals, businesses and, of course, parliamentarians to access the relevant law as set out in these instruments. The Senate committee recommended that, where the register has been rectified, it be annotated accordingly, and we acknowledge the government’s acceptance of this recommendation. The Senate committee also recommended that the bill be amended to require the Secretary of the Attorney-General’s Department to ensure the public accessibility of the database of legislative instruments, and we are pleased that this will also be implemented by government amendment.

The bill also provides that all registered legislative instruments must be tabled in parliament and subject to disallowance. The bill provides for a number of exemptions to the disallowance regime. However, I note that the Attorney-General has undertaken no exemption from the disallowance created by these bills. There are a number of amendments going to the disallowance regime, but of course I will reserve my remarks on those for the committee stage of the debate.

The bill also provides for the sunsetting or automatic repeal of legislative instruments after 10 years, with a number of exemptions, again to avoid the statutory books being clogged by outdated legislation that can only confuse the community as it tries to understand its legal obligations. This mechanism was previously objected to on the ground that it gave no automatic capacity to the parliament to extend the life of instruments that should endure beyond the sunset period. The new bill requires the Attorney-General to table in each house of parliament a list of instruments scheduled to sunset 18 months ahead of the sunset date. This is a significant improvement and will enable either house of parliament by resolution to exempt further nominated legislative instruments from sunsetting. Again, we acknowledge that the government has responded to the concerns of parliament about those sunsetting provisions.

Finally, and appropriately, the bill provides for a review of the legislation after three years and a review of the sunsetting provision after 12 years. I think that the amount of change in technology since this bill was mooted originally back in 1992—and there have been subsequent attempts since then—allows the government a better opportunity to put into practice the legislative instruments database, together with the ability to back-capture and monitor the progress of those individual legislative instruments to ensure that they remain relevant. It also allows the government to try—because I think it has failed in some respects—to at least limit, and ensure there is not an excess of, red tape.

In conclusion, I think that, while we recognise that the Legislative Instruments Bill may not be perfect or meet all outstanding
concerns, the time has come to give it a clear opportunity to work. I think all parties from all sides have been expecting a legislative instruments bill for some time now. It has been used in some parts as a political football. It is now time to progress the bill to ensure that there are appropriate arrangements for scrutiny of legislative instruments and that the legislative instruments are maintained in a database which is given legislative authority so that they are recognised for what they are, available to the public and easily accessible. On that note, I commend the legislation to the Senate.

Senator GREIG (Western Australia) (1.35 p.m.)—We Democrats welcome the reintroduction of the Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003. It has been a long time coming. A legislative instruments bill was originally introduced in 1994 and has been debated on numerous occasions since that time, most recently in 1998. The original bill represented an excellent legislative initiative, which responded to a report by the Administrative Review Council in 1992. In that report the Administrative Review Council recommended that, firstly, there should be a single piece of legislation dealing with the making, publication and scrutiny of all legislative instruments; secondly, legislative instruments should be readily accessible to the public by means of a public register; thirdly, the Attorney-General’s Department should be responsible for maintaining quality control over the drafting of all legislative instruments; fourthly, subject to legislatively defined exceptions, all legislative instruments must be subject to mandatory consultation and, where such consultation is not conducted, the parliament must be provided with reasons; fifthly, all instruments should be subject to parliamentary scrutiny and disallowance by either house of parliament; and, finally, legislative instruments should sunset after 10 years.

Although the original bill represented a massive improvement to the existing regime for legislative instruments, it failed to incorporate a number of the key recommendations of the Administrative Review Council. However, it was substantially improved by the Senate amendments in 1996 and 1998. Unfortunately, many of those amendments were not accepted by the government and the bill was never passed. It is regrettable, I think, that the government has taken six years to reintroduce the bill and that the version now before us is considerably weaker than that which was previously agreed to by the Senate. Although aspects of bill have been watered down, there is no doubt that it represents a significant improvement to the current arrangements in relation to legislative instruments. For this reason, we Democrats are committed to ensuring the passage of the bill.

The bill seeks to streamline the procedures for making, registering, scrutinising and setting all Commonwealth legislative instruments and for making these instruments more accessible to the public. Although some might argue that its subject matter is a little dry, the fact is that it is an incredibly significant bill, with far-reaching consequences for law making in this country.

The proliferation of delegated legislation in Australia has increased exponentially in recent years. Delegated legislation now governs almost every aspect of daily life. Yet, despite the sheer impossibility of ever being familiar with the thousands of instruments that exist, when it comes to legal liability we are all presumed to know these laws. It is for this reason that public access to legislative instruments is imperative to our system of governance in Australia.
This bill seeks to achieve greater accessibility by requiring that all legislative instruments must be registered on a publicly accessible, web-based register. This will provide members of the public with access to an authoritative, accurate and up-to-date record of all legislative instruments, including any amendments that have been made to those instruments. However, the bill does incorporate an extensive list of instruments which are taken not to be legislative instruments for the purposes of the new regime. It also contains extensive lists of instruments which, despite being legislative instruments in every other respect, cannot be disallowed by the parliament. The Attorney-General has given an assurance that this list does not contain any instruments which are currently subject to disallowance; however, it does contain a range of instruments which we Democrats have previously argued should be disallowable.

For the most part, and in the interests of facilitating the efficient passage of this bill, we have taken the view that, while we oppose the exemption of some instruments, we accept that the debate in relation to whether they should be disallowable has been had and has been lost. There are, however, a few instruments which we will be seeking to remove from the list of exemptions, including ASIO guidelines, which govern the procedures for detaining and questioning innocent Australians.

Another feature of the bill is the power of the Attorney-General to resolve any doubt as to whether or not a particular instrument is a legislative instrument, by way of issuing an Attorney-General’s certificate. This decision of the Attorney-General will be subject to review by the Federal Court, the Federal Magistrates Court or the High Court; however, it will not be disallowable by the parliament as was previously the case. We Democrats are disappointed that parliamentary scrutiny of such decisions has been removed.

The bill includes a number of measures designed to improve the drafting of legislative instruments. Among these measures is an obligation on the Secretary of the Attorney-General’s Department to take steps to prevent the inappropriate use of gender-specific language in legislative instruments. This new provision reflects a Democrat amendment previously passed by the Senate. Unfortunately, however, it does not go as far as our amendment did. The most significant changes that have been made to the bill relate to the watering down of the consultation regime. The Clerk of the Senate, Mr Harry Evans, has argued that the consultation regime has been watered down so substantially that it is now as weak as ‘dishwater’.

The 1996 bill contained strict requirements for issuing notices of intent prior to making a legislative instrument, inviting written submissions or participation in a public hearing and preparing consultation state-
ments. However, there were limited circumstances in which no consultation was required. A decision of a rule maker not to undertake consultation was subject to judicial review. In contrast, the new consultation regime has been described as ‘entirely discretionary’. It simply requires that a rule maker must be satisfied that any consultation that he or she considers appropriate and reasonably practicable to undertake has been undertaken. The fact that no consultation has been undertaken will not affect the validity or enforceability of a legislative instrument.

This represents a significant retreat from the underlying objectives of the legislation. The government’s stated justification is that the new proposed regime will greatly simplify the bill. This is no doubt true, but we Democrats take the view that simplification should not come at the expense of proper accountability mechanisms, and we regret the fact that the previous mandatory regime has been abandoned.

The bill encourages a rule maker to undertake consultation if a legislative instrument is likely to affect business or restrict competition. A Democrat amendment previously passed by the Senate increased the range of circumstances in which consultation should be undertaken to include effects on human rights, civil liberties, the environment and other sectors of the community. Given the potential for delegated legislation to affect all aspects of daily life, we Democrats believe that consultation must be encouraged in a wider range of circumstances, and we intend to move amendments to that effect.

Under the new regime, all legislative instruments are required to be laid before each house of parliament within six sitting days after their registration. In relation to the disallowance of legislative instruments, the bill essentially retains the current arrangements. In other words, a notice of motion to disallow must be given within 15 sitting days after the tabling of the instrument, and if the resolution is passed or the notice is not withdrawn the instrument will cease to have effect. The bill provides that legislative instruments will automatically sunset after 10 years; however, it contains a list of instruments to which the sunsetting regime does not apply, including instruments that facilitate intergovernmental schemes.

The Democrats welcome the government’s incorporation of two of our previous amendments relating to the sunset provisions. Firstly, either house of parliament will have the power to resolve that a legislative instrument should continue in force after the sunset date. Secondly, to assist each house in the exercise of this power, the Attorney-General must, 18 months before each sunset date, table a list of legislative instruments coming up for sunset. The rationale for allowing these instruments to continue past their sunset date is to facilitate the preservation of legislative instruments which are clearly intended to be long term and which are beneficial to the Australian community— for example, instruments which have environmental benefits or which protect human rights.

One of the key concerns that we Democrats have in relation to this bill is the proposed power of the government to expand the range of instruments which are not legislative instruments for the purposes of the bill, as well as those which are not subject to disallowance or not subject to the sunsetting provisions. What this means then is that the government will effectively be able to expand the scope of this legislation unilaterally without the need for legislative amendment, and we Democrats believe firmly that such powers should not be delegated to the government.
The government argues that any expansion of the exemption lists will be subject to parliamentary scrutiny since the regulations will be disallowable. However, we Democrats feel and believe that exempting instruments from the procedures established by this bill is something which should be proactively debated by the parliament rather than simply disallowed. The onus must be on the government to establish a cause for any additional exemptions. If there is a persuasive argument in favour of exemption, then it is likely that legislation to create such an exemption could be dealt with as non-controversial and dealt with swiftly during a Thursday lunchtime.

Finally, I would like to put on record the Democrats’ most serious concern in relation to this legislation—namely, that it preserves the arrangements which enabled the recent excision of the Melville Islands from Australia’s migration zone after the arrival of 14 asylum seekers on one of the islands. The Democrats believe that this was an appalling exercise of executive power which, for the sake of political gain, retrospectively stripped the asylum seekers of their right to claim asylum in Australia.

It is timely that this bill should come up for debate now because it gives the parliament the opportunity to ensure that such a situation never occurs again. The relevant provisions in the bill are those that relate to the time of commencement for legislative and other instruments. Both this bill and the Acts Interpretation Act express a clear intention to prevent any retrospective alteration of rights or liabilities and the Democrats believe that clarification is required to put it beyond doubt that it applies equally to all forms retrospectively whether for a matter of hours or for a matter of months. We will be moving amendments to this end.

In closing, I note that the bill provides for a review of the legislation in three years time. We welcome this as we believe it will provide an opportunity to assess whether this legislation is operating as intended and what improvements might be made. However, the Democrats have been concerned by the tendency of the government to continually point to the review as a standard response to our concerns in relation to the bill. In relation to significant areas of concern, such as the watering down of the consultation regime, the government has simply argued that we will have the opportunity to assess its effectiveness in three years time and determine whether our concerns are well founded. The point needs to be made that we are talking about a review over which the parliament will have no control. Even if the review identifies serious problems, there is no guarantee that we will have the opportunity to address those problems by way of legislative reform. It is for these reasons that I would emphasise the importance of getting this legislation right now. I look forward to a more comprehensive consideration of some of the issues associated with this bill during its committee stage.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.47 p.m.)—I thank senators for their contribution to a bill which has had a longstanding history, as has been alluded to. The Legislative Instruments Bill 2003 will introduce a comprehensive regime for the management of and public access to Commonwealth legislative instruments. That begs the question: what is a legislative instrument?

The bill’s definition of a legislative instrument is designed to ensure that all instruments of a legislative character come under the bill’s regime unless expressly exempted. The definition focuses on the character of an instrument rather than what it is called. The bill defines a legislative instru-
ment as being an instrument in writing that is of a legislative character basis made in the exercise of a power delegated by parliament. The proposed legislation provides further guidance by explaining that an instrument is taken to be of a legislative character if it determines the law or alters the content of the law rather than applying the law in a particular case and it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right or varying or removing an obligation or right.

The bill contains other mechanisms to provide certainty as to whether an instrument is legislative and, hence, subject to the requirements of the bill. All instruments in certain specified categories are treated as legislative. Regulations, statutory rules, proclamations and disallowable instruments are some examples. For other instruments the Attorney-General can issue a certificate resolving whether, as a matter of law, the instrument is legislative. Once an instrument is placed on the Federal Register of Legislative Instruments it becomes conclusively legislative. This can be a way of resolving uncertainty about the nature of an instrument.

So what we have is a bill which introduces a comprehensive regime for the management of and public access to Commonwealth legislative instruments, a very important aspect in any good governance of any community. Such a regime is well overdue, and I think that point has been made by the other speakers as well. This bill has been substantially revised and simplified to take advantage of changes in technology and to remove potentially adverse impacts on efficient and effective administration. The revision process also involved consideration of issues raised by the opposition, and the bill takes into account a number of those concerns.

The bills were referred to the Senate Standing Committee on Regulations and Ordinances for inquiry, and the report from that inquiry was tabled on 16 October this year. I thank the committee for work undertaken in inquiring into and reporting on the bills. I also acknowledge that the report was produced in a tight time frame and provides a comprehensive analysis of the bills before the Senate today. The committee made 13 recommendations and the government has proposed legislative amendments to address six of those recommendations. The government believes that the remaining seven recommendations can be given effect to without legislative amendment. Firstly, the government accepted the committee’s recommendations that the following three matters be included in the review of the bills three years after commencement. They are: parliamentary amendments which make legislative instruments disallowable where those legislative instruments are made under a bill which establishes or amends a national scheme of legislation; the operation of the consultation provisions in the regulatory impact statement process; and appropriate ways in which incorporated material might be made accessible.

The government has no objection to the committee’s recommendation that the principal regulations implementing the proposed bill should stand referred to the committee in the same terms as the bill, but it believes that it is a matter for the Senate to be determined at the appropriate time. The committee recommended that the explanatory memorandum for a bill that establishes or amends a national scheme of legislation should state whether legislative instruments that may be made under the bill are disallowable or not. The government agrees that it would be useful for an explanatory memorandum to provide this information. The Attorney-General’s Department will consult with the Department of the Prime Minister and Cabi-
The government accepts the recommendation that the Attorney-General’s Department not make provision for the electronic lodging of legislative instruments for tabling in the parliament. The government, however, proposes retaining the provision to allow for this method of tabling in the future, if thought appropriate. The current requirement for tabling hard copies will not change without consultation with the Department of the House of Representatives and the Department of the Senate. Ultimately, the regulations could be disallowed if they were made without agreement.

The government has considered clarifying the meaning of the term ‘provision’ in the disallowance provisions in the bill. The government has resolved that the term ‘provision’ is as neutral and precise a term as possible and that trying to define it could unintentionally limit rather than clarify the disallowance powers.

In relation to the committee’s recommendation that departments and agencies provide a list to the parliament of those existing instruments that they do not intend to register, the government emphasises that the bill contains a statutory obligation on rule makers to lodge all existing legislative instruments. If they do not register an instrument in the required time, the instrument ceases to exist. The government believes that this statutory obligation plus principles of responsible government and the Public Service code of conduct will ensure that the existing instrument will be registered. The Attorney-General’s Department will monitor this and provide an annual report to parliament on the back-capturing process. The government accepts the committee’s recommendation that the Attorney-General’s Department monitor the back-capturing of existing legislative instruments. The department will maintain an annual statistical return on instruments that have been back-captured.

As I stated at the outset, this is a regime which is well overdue. It provides a comprehensive scheme for the management of, and public access to, Commonwealth legislative instruments. This is important not only for the good governance of Australia but also for transparency in government—and, of course, it provides legislation which covers the delegation of powers by parliament. It is all very well for parliament to enact laws and debate them in this chamber and the other place but, where the delegation of those powers is made, it is important that there be a regime for the management of those powers and public access to them, because, as I have just described, those instruments impact on the lives of average Australians. That goes to the very extent of regulating the duties and rights of your average citizen.

The bills have been a long time coming—there has been long history behind these bills—but the government believes that they are something that had to be got right. Of course, there will be amendments during the committee stage, as Senator Greig has alluded to, and I look forward to the contributions from the opposition and Democrats. I commend the bills to the Senate.

Question agreed to.

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.

Sitting suspended from 1.57 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

Defence: Contracts

Senator CHRIS EVANS (2.00 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister con-
firm when concerns were first raised about the tender processes for the $5 billion Air 9000 project as reported in today’s press? When did the minister first become aware of the allegations and what action did he take? Given the scale of the allegations made, has the matter been referred to the Federal Police for investigation? Is the minister assured that the inspector-general has all the necessary powers to investigate this matter, including the power to compel people both within Defence and outside Defence to provide evidence? Can the minister advise when the current investigation began and when it is expected to be completed? Has the Air 9000 project now been frozen?

Senator HILL—Certain allegations were raised a short time ago in relation to the tender process surrounding Air 9000. The secretary referred these questions to the inspector-general for investigation, which is the proper process to adopt. I trust that matters will be resolved in the near future and that time will not, therefore, be lost in relation to the government’s desire to purchase further troop lift helicopters and also move towards the rationalisation of the ADF’s helicopter fleet. It is true that from time to time tender processes run into questions of this type. A process exists within Defence in order that such allegations can be dealt with expeditiously and properly and that is certainly the way the government is approaching this particular matter.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I repeat the question because the minister did not answer most of the substance of the question, which was: when was he first made aware of the concerns surrounding the Air 9000 project and what action did he take? Why has the matter not been referred to the Federal Police for investigation? Is he confident that the inspector-general has all the necessary powers? Has the Air 9000 project been frozen, as was reported today? These are important questions that I would appreciate the minister responding to.

Senator HILL—The project has not been frozen. As I said, I expect little time to be lost because the government is anxious to move to the acquisition of the new helicopters. The process that was adopted by the secretary when these matters were brought to his attention seems to me to be the proper one. That is why we have the inspector-general. The inspector-general will report to the secretary and the secretary will report to me. Hopefully, we can get on with the job of providing new generation helicopters to the ADF.

Australian Labor Party: Economic Policy

Senator FERRIS (2.03 p.m.)—My question is to the Minister representing the Treasurer, Senator Minchin. Will the minister advise the Senate of the importance of sound, consistent economic policies? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Ferris and acknowledge her great interest in sound economic policy. One of the really distinguishing features of our government has been our record of a strong focus on a consistent, coherent economic policy framework to deliver jobs and wealth to Australians. We have focused on the long-term challenges of reducing debt, making government finances sustainable, reforming the tax system and lifting productivity in Australia to create jobs, increase real wages and keep inflation low. The results of our reform agenda are there for everyone to see. We have continuing strong economic growth, small business confidence at record highs, unemployment below six per cent and inflation below three per cent, rapidly rising company profits and strong business investment.
I was asked about alternative policies to our strong economic credentials. Today the opposition voted by the smallest of margins for the policy chaos of Mr Latham rather than the policy vacuum of Mr Beazley. Mr Latham, the new opposition leader, recently tried to position himself as a low tax candidate, in so doing picking a fight with his own colleagues Mr Swan, Mr Beazley and Mr Albanese, all of whom are arguing for higher taxes. If we have a look at Mr Latham’s record, in 1990 Mr Latham was an advocate of not only state income taxes but also a state consumption tax. In 1992 he advocated a capital gains tax on the family home. In 2001 he opposed our 50 per cent cut in capital gains tax. He is a supporter of a local betterment tax, whatever that is. And who can forget, of course, the progressive expenditure tax which he outlined in his book and which suggested it could involve marginal rates above 100 per cent? Early last year he proposed the abolition of the R&D tax concession. On his first day as shadow Treasurer he proposed the abolition of negative gearing on property investments.

Mr Latham has been shadow Treasurer during a very chaotic period in Labor economic policy making. During that period we have seen Labor effectively advocate a tax increase on the mining industry, a tax increase on Australian companies with offshore operations, a rise in the super surcharge and a new payroll tax on every Australian business. That is the Labor scorecard under the shadow Treasurer, Mr Latham.

What we have seen so far from Mr Latham is nothing more than a complete policy smorgasbord, with no rhyme or reason and of course, to the chagrin of those opposite, absolutely no consultation. The most recent example of this was Mr Latham’s extraordinary proposal for a matched savings account, a policy which apparently never went through shadow cabinet and was never discussed with any of his Labor colleagues. It was an ill-conceived policy which involved the taxpayers contributing $1.2 million for every $170,000 of private savings generated. So it is little wonder that people like Mr Swan totally ridiculed this policy when it was announced by Mr Latham. The problem for Labor is not just that half the Labor Party do not agree with his policies but that Mr Latham does not agree with himself from day to day. He has championed every conceivable new tax. Then he goes and sells himself as advocating spending increases and tax cuts but he is going to keep the budget in surplus. It has been a totally chaotic period as shadow Treasurer. What the Labor Party has voted for today is a continuation of the policy chaos we have seen in recent months and particularly while Mr Latham has been shadow Treasurer.

**Defence: Contracts**

Senator **CHRIS EVANS** (2.07 p.m.)—My question is to the Minister for Defence, Senator Hill. Is the minister aware of media reports based on internal Defence sources that in February this year he was set to preempt the tender process for the $5 billion Air 9000 project and announce Sikorsky as the winner? Did competing suppliers approach the minister, his office or the department earlier this year with serious concerns about reported plans to abandon the tender process for this project? When were those concerns raised and by whom? Minister, didn’t you consider abandoning the tender process and awarding the contract to Sikorsky? Can you assure the Senate that this tender process has been free from political interference?

Senator **HILL**—It is absolutely free from political interference, as demonstrated by the fact that it is taking place. The request for proposals was issued some months ago. Senator Evans would know from, presumably, his reading of the defence magazines the
companies that have put forward proposals. Those proposals have been analysed by quite a large team within Defence, and various advices have been given on those proposals. It is absolutely free of any political interference. What this government is interested in is getting additional troop lift helicopters in accordance with the timetable that the government set down and published and also in moving towards rationalisation of the helicopter fleet which means that we can maintain the fleet more cost effectively than we can now. I look forward to the ultimate advice from Defence as to which of the tenderers most appropriately provides the ADF with the assets that the government is seeking.

Senator CHRI$$ EVANS$$—Mr President, I ask a supplementary question. I reiterate the first question which the minister failed to answer: did the minister give active consideration to abandoning the tender process and awarding the contract to Sikorsky, as was reported at the time? Isn’t it true, Minister, that you actively considered abandoning the tender process and awarding the American bid in line with the previous decisions that this government has taken with regard to the Collins submarines and the joint strike fighter? Did you consider abandoning the tender process and awarding the contract to Sikorsky?

Senator HILL—I do not think Senator Evans should believe everything he reads in newspapers, particularly when the newspaper article says that it is speculation. I really wonder whether it is a sensible thing for Labor to be asking questions on defence policy today because if this Labor Party was seriously interested in national defence it certainly would not have elected Mr Latham as its leader today. He is someone who recently bagged the President of the United States, the president of Australia’s principal ally, in personal and offensive terms, with no interest at all in the defence relationship between our two countries. That is where I suggest Senator Evans puts his attention for the time being because this government deserves an opposition that seriously believes in the defence of Australia and that is prepared to elect a leader who seriously believes in protecting Australia’s security interests. (Time expired)

Customs: Border Protection

Senator EGGLESTON (2.11 p.m.)—My question is to the Minister for Justice and Customs. Will the minister inform the Senate of the success of the Howard government’s initiatives to enhance border protection? Is the minister aware of any alternative proposals?

Senator ELLISON—This is a very important question from Senator Eggleston, who has taken a great interest in border protection. Under the Howard government we have seen great measures in relation to border protection. Just in this year’s budget there has been a 20 per cent increase in the number of flights by Dash 8 aircraft and a doubling of sea days by the Customs maritime fleet. What we have in place is excellent work being done by Coastwatch, Customs, the Air Force and the Navy in looking out for Australia’s borders. We have seen that in a number of results. We saw it in the interception of the Korean vessel the Pong Su when we had great cooperation between Australian defence forces, Coastwatch and the Australian Federal Police, as well as state police forces. This is how we have to work if we are to secure Australia’s borders.

We have also seen record seizures of illegal fishing vessels. We have seen very good work in the Southern Ocean protecting Australia’s fishing stocks. The seizure recently of the vessel Vārāsa brought to six, as I recall, the number of vessels that have been seized in the Southern Ocean in recent years. Not
only that, but we have increased the area of surveillance of ocean. In 1999-2000, Coastwatch flew 90 million square nautical miles of surveillance. We have increased that by a further 56 million square nautical miles in just three years, with 4,500 surveillance flights in a typical year. This is a very good regime in looking out for Australia’s borders.

Senator Eggleston asked about alternative proposals. Today we have the new Leader of the Opposition, Mr Latham, saying he is going to be positive. Well, let us see him reverse Labor’s stance on this ill-gotten proposal of a coastguard. Let us see him join in a bipartisan approach with the government in looking out for Australia’s borders. Back in July he said that a coastguard would be fully funded. At the last election Labor said it was committing over $600 million to this. What would that get? According to the shadow minister for immigration, Nicola Roxon, when she was interviewed on 2GB’s Ray Hadley show, it would be three boats. Just three boats—that is all their proposal contains. It is interesting to see a detailed analysis of the plan. Just recently in the *West Australian*, Dr Alexey Muraviev, an expert from Curtin University, criticised the proposal by Labor for a coastguard. In the article he wrote, headed ‘High costs sink coastguard plan’, he stated:

LABOR’S plan for a dedicated coastguard to help monitor and protect Australia’s vast shoreline and territorial waters simply doesn’t add up for all sorts of reasons.

Not only would it reduce the navy’s ability to run effective operations at sea, it would also have a detrimental effect on navy personnel themselves. That comes from an independent expert assessing Labor’s slick, ill thought through plan in relation to coastguards. Where will they get the money? Why do we need another bureaucracy? Why don’t they join with the government in relation to the excellent work that we are doing in border protection? Let us look forward to the new leader of the Labor opposition, Mr Latham, having a more positive attitude in relation to this. He has said that he is going to be more positive; let us see him join in a bipartisan approach to border protection in Australia.

Research: National Policy

**Senator CARR** (2.15 p.m.)—My question is to Minister Vanstone, representing the Minister for Education, Science and Training. Can the minister confirm that the final report of the *Mapping Australia’s Science and Innovation System* confirms this government’s failures in strategic areas of national research policy? Can the minister confirm that this report establishes that, as a result of the government’s cutbacks—and I quote:

The long term sustainability of Australia skills base in the enabling sciences is under pressure with declines in participation in most science subjects in Year 12 and science and technology subjects at undergraduate level at university?

Now that it is evident that this decline is beginning to flow through to postgraduate participation, what targets has the government set to remedy this policy failure?

**Senator VANSTONE**—I thank the senator for his question. I know that he has a longstanding interest in higher education and his views are largely fundamentally opposed to any that I hold. Nonetheless, a simple answer to his question is: no, I have not seen the report to which he refers. I do not have a brief from the relevant minister on that matter. I will take his question on notice and get him an answer.

**Senator CARR**—Mr President, I ask a supplementary question. Minister, in getting a report from the minister, could you establish whether or not it is a fact that this report acknowledges the dramatic decline in spend-
ing on research infrastructure by both the government and the private sector over the past six years, with capital spending as a percentage of R&D investment falling from 14 per cent to nine per cent during that time? Could the minister also confirm that this report concludes that both the national and international participation in research has been compromised by this government’s inadequate research policies and that in the broadbanding our capacity will not be able to match our future research demand? Further, has the government identified the amount of the shortfall in R&D infrastructure investment? What targets has the government set to remedy this shortfall?

Senator VANSTONE—I was a little bit surprised that all those questions were a supplementary. But, nonetheless, before indicating that I will take those questions on notice, I am just wondering if the senator has ever heard of the government policy called Backing Australia’s Ability, spending billions of dollars—

Senator Carr—Why is it failing? That is the question.

Senator VANSTONE—We are spending billions of dollars on Backing Australia’s Ability in science and innovation. I was a little bit suspicious; I was wondering whether perhaps I was dead and I was in heaven because Senator Carr was asking his question politely, but he has indicated that he is back to life.

Trade: Free Trade Agreement

Senator ALLISON (2.18 p.m.)—My question is to the Minister representing the Minister for Health and Ageing. Can the minister confirm that the dismantling of the PBS pricing process will be put on the table at the FTA talks with the United States? Does the government agree that the cost to Australia of agreeing to US demands would be at least $1 billion annually? Yes or no, Minis-

Senator IAN CAMPBELL—This is entirely an issue for the Minister for Trade who has responsibility for the US FTA negotiations. From a general point of view, the Prime Minister and the Minister for Trade have both made it quite clear that the PBS is not on the table.

Senator ALLISON—Mr President, I ask a supplementary question. Can the minister also assure us that the US negotiators do not want to change the patent and data protection regulations that would greatly extend the drugs period covered by patent? What will the cost be to Australia’s PBS if the out of patent generic medicine manufacture is delayed by such a push? Is it the case that the United States wants our TGA to notify the patent holding company of any interest being shown in their drug by a competitor, allowing major global corporations to tie up locally owned competitors in lengthy and expensive legal action? Is it the case that the United States is also demanding changes that would mean generic manufacturers would have to repeat safety studies when producing their identical version of the drug and that repeated studies would be unlikely to receive ethics approval? Is it not the case that these measures, if they went ahead, would cripple the Australian generic manufacturers?

(Time expired)

Senator IAN CAMPBELL—If Senator Allison wanted a fair dinkum answer, she would actually direct the question to the Minister for Trade. In relation to generic medicines, there has been some media speculation that intellectual property issues under discussion within the free trade agreement negotiations have the potential to adversely affect the generic medicines industry and indirectly the PBS. But I reiterate that the government is committed to maintaining
a viable generic medicines industry and the negotiation of a free trade agreement will not—I repeat, not—compromise this commitment. I should also add that the United States has made no proposals to Australia regarding the PBS.

**Customs: Security**

*Senator MARK BISHOP (2.21 p.m.)*—My question is to the Minister for Justice and Customs, Senator Ellison. Can the minister confirm that approximately 2.1 million containers will enter Australian ports this year both full and empty and that the ambition is to inspect by X-ray 80,000 of those—that is, three per cent? Can the minister also confirm Customs’ prize-winning achievement of this result, which its public relations machine says will be a twentyfold increase on the previous levels? That is, can he confirm that the previous inspection rate of containers was, in fact, one in every 1,500? Given that the inspection of airfreight is close to 100 per cent, how does the minister justify this appalling record on seaborne imports, particularly in light of the huge concern being expressed internationally about exposure to seaborne terrorism?

*Senator ELLISON*—We have said repeatedly that containers which come into this country are screened. We do that on the basis of intelligence assessments and risk assessment. It is totally ridiculous to propose that you X-ray every container coming into Australia. Anyone with any sense would not stand for that proposition. We do a risk assessment and every container that comes into Australia is screened. Of course, where that then meets our assessment, we inspect that container. What we have seen with the installation of our container X-ray facilities in Brisbane, Sydney, Melbourne and Fremantle is the fulfilment of an election promise to put in place state-of-the-art container X-ray facilities, which have increased by 20 times the number of containers that can be inspected and X-rayed by Customs. That has been recognised internationally. Commissioner Bonner, who heads up the United States Customs Service, recognised that when he came to Australia and inspected our facilities. What we have in place is state-of-the-art technology to inspect containers coming into Australia.

In relation to the number of containers that are inspected, we estimate that around five per cent will be X-rayed or inspected. Of course, that follows a risk assessment. To give you an idea: where we inspect incoming baggage, we find that just five per cent of seizures come from blanket inspections and about 90 per cent come from targeting just five per cent of baggage. What that shows is that risk assessment works. That is exactly how we target cargo coming into this country, people coming into this country and generally across law enforcement. Risk assessment and intelligence based actions are the most appropriate way to intercept anyone who is attempting to bring illicit cargo into this country, be it a threat to national security or quarantine or be they illegal entrants, and we have shown that in relation to our strategic interventions.

We have seen record drug busts by Customs and the Australian Federal Police, we have seen interventions in relation to quarantine and we have seen interventions in relation to prohibited imports—all due to very good work by Customs officials, and based on risk assessment. Anyone who suggests that the blanket approach is the way to go for containers is asking that we reduce the flow of commerce into this country to a standstill, because if you have to X-ray every container coming into this country or leaving it, that simply would not be feasible. Modern law enforcement works on risk assessment, and that is how we are approaching this. We are also using top technology in relation to the

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**CHAMBER**
X-ray of those containers, and that has been recognised internationally.

Senator MARK BISHOP—Mr President, I ask a supplementary question. Putting aside all of the minister’s public relations machinery on narcotics inspections—mostly, as you can see, it is from intelligence advice rather than inspections—what is the record with respect to other hazardous illegal imports, such as guns and other weapons of terror? What specific performance indicators do Customs have for such interceptions?

Senator ELLISON—We have training in place for Customs officials for a whole range of substances coming into this country which could cause havoc—for instance, precursor chemicals in relation to amphetamines and hazardous substances. This is part of a comprehensive approach to border control. Today I announced funding for the National Institute of Forensic Science to give us information in relation to precursor chemicals for explosive substances. It is vital information which we will need to feed into Customs and the Australian Federal Police in order to protect Australia’s interests. I announced that just today with Minister McGauran. That will complement the work being done by the Council of Australian Governments on hazardous materials. There is a range of unprecedented measures that we are taking at the border to protect the Australian community and Australia’s national security.

Fuel: Ethanol

Senator HARRIS (2.26 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry. Is the minister aware of a media campaign in Queensland highlighting the extreme hardship of the producers in the sugarcane industry? Minister, this hardship is a direct result of the government policy that is forcing world parity pricing, based on Third World costs, onto Australian producers, who have to pay developed world prices for fuel, fertiliser and water. In recognition of the desperate plight of the sugar industry, will your government rescile from the fuel tariff issue and support the ethanol industry in Australia?

Senator KEMP—Thank you, Senator Harris, for that question. You asked whether I am aware of the recent media campaign; I thank you for bringing it to my attention. As a result of your intervention, I am aware of the campaign. I am advised by the minister responsible that the advertising campaign staged by the so-called sugar reform committee is misplaced and ill-informed. Much of what this group is calling for—for example, the removal of the ministerial directive and the retention of the single desk—can only be changed by the Beattie government. You have to ask yourself: what has the Beattie government done for the sugar industry? Very little. There have been failed loan schemes and the recent promise of project funding, all amounting to less than half a million dollars—a very poor performance by the Beattie government.

I am also advised that the people behind the sugar reform committee would be better harnessing their energy on trying to come up with realistic solutions for the industry and for putting pressure on the Beattie government to reach a deal with the sugar industry that protects the rights of growers and secures the future of sugar milling regions. The federal government has demonstrated its strong commitment to assisting the sugar industry through difficult times. Since the year 2000 over $80 million in assistance has been provided to cane growers and their families under the current reform package and the previous assistance package. This short-term assistance was designed to stabilise the industry as it overcomes its current problems. As part of this most recent assistance package, all recipients were provided
with access to business and financial planning assistance.

We have entered into an agreement with the Queensland government under a memorandum of understanding. As part of this agreement, the Queensland government is committed to reforming certain elements of their Sugar Industry Act. The Australian government has always made it clear that the Queensland government must engage and consult industry leaders before reforms could be implemented. However, I am sorry to be advised that it was not until very recently that the Beattie government has been prepared to deal with the sugar industry. Therefore, we have been unable to complete the negotiations with the Queensland government on a satisfactory system of reform of the industry to secure its future.

We are naturally anxious that those issues be resolved. Prices for sugar in the world market have been in steady decline over recent months, and that puts increasing pressure on the industry. It is clear to everybody involved in the industry that there needs to be some reform to secure everyone’s future. We are happy to be part of that change. The sooner these changes are made, the better. Any delays will just delay the opportunity for the industry to recover. Mr President, I notice that time is running out and I do have more information. If Senator Harris would like to ask me a supplementary question, I would be very happy to supply him with some more information.

Senator HARRIS—I do wish to ask a supplementary question. Currently the octane rating in fuel is supplied by aromatics and fuel additions. Aromatics in fuel are currently set at 42 to 48 per cent. As these are gradually reduced to meet clean air legislation, the refining industry is restricted in providing a suitable octane rating while maintaining low emissions. Ethanol is a renewable, environmentally sensitive source of octane. Will the government ensure that the benefits of octane produced from sugar cane flow through to the farmers in the industry?

Senator KEMP—Senator Harris asked whether the government will support an ethanol industry in Australia. Let me restate that the government has a comprehensive support package for biofuels, including ethanol. This package aims to increase the use of ethanol in Australian transport. The government will provide $37 million to fund a one-off capital subsidy for projects that provide new or expanded biofuels capacity. Among other things, there is $10 million in short-term assistance to all existing ethanol producers as a measure to assist in the transition to the 10 per cent standard blend mentioned by you in your supplementary question. This was announced earlier this year. These actions further supplement actions already taken by the government to support fuel ethanol production. In this year’s budget, the government announced that it would extend the 38c per litre temporary excise and the production subsidy arrangements for ethanol until 2008. (Time expired)

Customs: Cargo Management

Senator KIRK (2.33 p.m.)—My question is to Senator Ellison, Minister for Justice and Customs. Does the minister recall that, in the supplementary estimates on 3 November, the Australian Customs Service conceded that the cost of the Cargo Management Re-engineering project had grown from $35 million to a current estimate of $145 million? Can he also confirm that additional funds will now be sought from the budget and that this will entail an increase to existing user charges? What explanation does the minister have to satisfy industry concerns that they are effectively paying for the ineptitude of Customs in managing this project, which has now also slipped by two years? Will the min-
ister rule out any additional levies and charges to industry users to fund the future needs of the project?

Senator ELLISON—The Cargo Management Re-engineering program is perhaps one of the greatest things to happen to Customs since Federation and will provide industry with a great deal of advantage in relation to the free flow of cargo in and out of Australia. In fact, it incorporates an integrated cargo system to replace a range of legacy systems, a new and sophisticated electronic corporate gateway known as the Customs connect facility and a range of internal IT modules supporting Customs’s business processes.

This program was first announced in 1996. It was a measure to streamline the import and export of cargo into and out of Australia. In December 1997 outsourcing was approved and Customs entered into a contract with EDS. Significantly, at the time Customs believed the project was modest enough not to require a budget measure and that it could absorb the expense involved. In March 1999 costs were estimated at $30 million for cargo computer programs. In the following year, legislation was passed to allow CMR to be implemented. By March 2001, the estimate for CMR, including the ICS and the CCF that I have mentioned, had risen to $55 million. It was a big program; it was something which was going to revolutionise the way that cargo was dealt with in Australia.

There was a contract variation, which was mentioned in estimates, to accommodate the increased complexity and size of this program. It is now apparent that the total cost will be in the vicinity of $146 million. This is something which has had the support of industry. We have been negotiating and consulting with industry in relation to the timetables for both export and import measures. Recently we announced an extension of time to accommodate industry’s concerns. We have legislation in relation to the timetable which we have set for the middle of next year. We have said that if we need to—only if we need to—and if industry requires it, we will extend that.

This has been the biggest measure seen by Customs since Federation. It will greatly revolutionise the way that cargo is dealt with in Australia. It has the support of industry and for very good reason—it is streamlining the importation and the export of cargo. This has not been a small exercise; it has been a very large exercise. The United States have a similar project which is going to cost them $1.7 billion and has taken seven years to develop. That gives you some idea of the immensity of these sorts of programs. We are leading the world in relation to best practice. It is something that we have to move along with if we are to stay in the game internationally. We have the support of private enterprise. I am sure that Senator Kirk is not going to suggest that industry does not want this to occur—because it does.

Senator KIRK—I ask a supplementary question. In the light of the minister’s refusal to answer questions on notice about the notorious break-in at Mascot where four computers were stolen, what does the controversy on the CMR project say about the ability of the Customs service to properly manage their business? Will the minister confirm that, in seeking additional funding for the project in the budget process, he will also seek funding to replace funding previously derived from internal savings and cutbacks?

Senator ELLISON—Customs has seen unprecedented funding from the Howard government, which it never saw when Labor was in power. We have expanded border protection, we have increased flights and sea days and we have increased measures at Aus-
Australia’s airports. There has been no cutback in the operation of Customs in this country. In fact, we have seen the biggest growth ever of Customs in recent years by way of the funding and operations that we have allowed Customs to embark upon. This Cargo Management Re-engineering program has been embarked upon whilst all that has been occurring. We have been addressing industry’s concerns and streamlining the import and export of cargo and, as well as that, increasing border protection for this country.

**Business: Employment**

Senator TIERNEY (2.38 p.m.)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Will the minister update the Senate on how the Howard government is trying to make it easier for Australian businesses to create jobs? Is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Tierney for his question and for his ongoing interest in job creation. The Howard government is committed to making it easier for Australian business to employ people. We have reformed the tax system, making it simpler and fairer; we have managed the economy in a strong and responsible manner, providing historically low interest and inflation rates; and we have been reforming workplace relations.

We all remember the adamant opposition to waterfront reform and the declaration that lift rates could not improve. But under this government’s leadership we now have record productivity on the wharves. Most recently, the government enacted legislation which improves the protection for casual employees and employers from frivolous and unfair dismissal claims. Businesses now have certainty about the economy and employment practices, and workers have appropriate job protection. But there is still more to be done.

The Howard government is absolutely committed to pursuing fairer dismissal laws for all Australians and removing the scourge of secondary boycotts, which still linger because Labor is captured by the unions.

I am aware of an alternative policy approach. Labor’s approach to industrial relations is a mixture of outright opposition and running from the problems we still face. We all know that Mr Latham has little regard for occupational health and safety—at least the occupational health and safety of a taxi driver. But he also has quite a colourful history on workplace relations, especially during the time that he was Mayor of Liverpool City Council. Perhaps it is worth noting that Mayor Latham’s strategy of employee relations was shown in 1992. Rather than face disgruntled council employees, he hid in his office to avoid a meeting with them. On this day 11 years ago, a vote of no confidence in Mayor Mark Latham was passed at a meeting of about 250 Liverpool council employees. The employees were angry at the mayor. The no-confidence vote was carried 243 votes in favour to two against. No doubt Mr Latham’s own colleagues will now experience first hand Mr Latham’s approach to industrial relations.

We know Mr Latham can put out the rubbish, even if it is a few days too early. Now, as Labor leader, he should put his wheelie bin to good use, get it into Labor’s workplace office and throw out Labor’s mindless policy of opposing our reforms. If he did, it would not be a few days too early but 7½ years too late, especially for those 50,000 Australians who will face a bleak Christmas, unemployed and unable to provide a livelihood for their family because of Labor’s mindless opposition to our plans to make the unfair dismissal laws fairer. Today Mr Latham said that he would not oppose for the sake of opposition. He has the chance to do the right thing and support the government’s
plans to make dismissal laws fair. Over 50,000 Australians are depending on him to show some leadership and to show that Labor has turned a new leaf with this new generation leader.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Indonesia led by the Deputy Speaker, Mr Iskandar. On behalf of honourable senators, I have pleasure in welcoming you to our Senate and I trust that your visit will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Veterans: Home Care Program

Senator MARK BISHOP (2.43 p.m.)—My question is to Senator Coonan, the Minister representing the Minister for Veterans’ Affairs. Is the minister aware of the Veterans’ Home Care program, which was intended to provide HACC type services to veterans and war widows in need of support in their home? Is the minister aware that the Veterans’ Home Care program has suffered under spending, misallocation between regions and now a serious funding shortfall? Why is it that services to veterans and war widows are being reduced, and why are veterans and widows being referred back to HACC rather than receiving the service they need? Why is the government in default on this program and when will funding be increased to restore services to assess levels of need as promised?

Senator COONAN—I thank Senator Bishop for the question. One of the things I would have thought Senator Bishop might do before he launched into asking a question such as this, with his longstanding interest in this matter and presumably his knowledge, would be to get his facts right. What is it about the Labor Party that they can never get their facts right when they ask a question? It is a fundamental point whereby, if they are going to ask a question and impugn this government, they should at least get their facts straight. Funding for veterans’ home care has not in fact been cut. In the main federal budget, provision was made for an additional $8.6 million in funding for the Veterans’ Home Care service, bringing total funding for the year 2003-04 to more than $76 million. Veterans’ Home Care provides domestic assistance, safety related home and garden maintenance, personal care and respite care to a large number of veterans.

Senator Jacinta Collins—Listen to the question before you sledge, next time.

Senator COONAN—Senator Collins obviously does not know, either, because she is yelling over the other side of the chamber. To date, more than 89,500 veterans have been assessed for services, and approximately $67.2 million worth of services, including those purchased and delivered through the HACC program, were provided to veterans in 2002-03. The intent is that Veterans’ Home Care will provide low-level support to many veterans, rather than intense care to only a few who would otherwise be more appropriately looked after by nursing and aged care services. If people receive more support than they are assessed as needing, this will mean that others will miss out. So obviously there is an attempt in this program to get the balance right so that more eligible people can get the assistance they need.

The Australian government is committed to VHC and to giving every assistance to those veterans who are able to remain independently in the family home, just as we are with other frail elderly Australians. Those who can be left in their own home with assistance for the longest period of time always do best. It is best for their carers, best for
their families and best for those Australians, and it is certainly best for our veterans. More than 18,000 veterans have chosen to transfer from the Home and Community Care program for this very reason. But the funding has always been limited and services are targeted to veterans and war widows with low-level needs. That seems, certainly in principle, to be an appropriate way for looking after people whom this government values—people who have provided service to this country—and whom this government will continue to care for in the most appropriate way.

Senator MARK BISHOP—Mr President, I ask a supplementary question but, firstly, I should correct the minister. I did not refer to cuts; I referred to underspending, misallocation between regions and funding shortfalls. In that context, my supplementary question is this: can the minister explain for the Senate why, contrary to promises by Minister Vale, there are now waiting lists for veterans to receive home care services? Minister, given that the Howard government is so intent on opening memorials around the world commemorating the dead, when will serious consideration be given to the real needs of living veterans?

Senator COONAN—Thank you for the supplementary question. I refute and repudiate utterly the imputation that this government are not interested in or concerned about providing for veterans. We are interested not only in providing for veterans but also in appropriately commemorating service. I would have thought that Senator Bishop, and indeed those opposite, would support the fact that the government take a particular interest in and commemorate the war dead in appropriate ways wherever we possibly can. How can anyone seriously object to that sort of recognition and also to the kind of assistance that has been provided to the living, who obviously need this ongoing care? Minister Vale, who concentrates specifically on these matters as part of her portfolio, is absolutely committed to ensuring that this funding is appropriately distributed—and will continue to do so—and that this government will continue to support those veterans. (Time expired)

Australian Security Intelligence Organisation: New Powers

Senator GREIG (2.50 p.m.)—My question is to Senator Chris Ellison, the Minister representing the Attorney-General. The minister would be aware that this time last year the government was arguing for the urgent and important passage of the new ASIO legislation—arguing that a new detention and questioning regime would provide a vital and urgent tool to protect the community. With these claims of urgency in mind, can the minister inform the Senate as to how many times the detention and questioning powers have been used by ASIO since their introduction in July this year? When was the first occasion on which they were used? Can the minister confirm the report in the Weekend Australian on 8 November this year that ASIO first used its questioning powers in the week immediately prior to that date?

Senator ELLISON—I am aware of the report that Senator Greig has mentioned. The government has now implemented the necessary measures to enable ASIO to seek warrants for a range of activities in accordance with new powers under the amended ASIO Act and relevant regulations. The Attorney-General has authorised the use by ASIO of some of those powers in specific operations. Others, however, including the ability to seek warrants to question or detain individuals, have not been used to date. I can assure the Senate that authorities such as ASIO investigate all activities relevant to security but, consistent with the practice of successive governments, neither the Attorney nor I pro-
pose to comment on the detail of those investigations.

Senator GREIG—I ask a supplementary question, Mr President. I note, Minister, that the Director-General of ASIO is required to include in the annual reporting the number of warrants issued and the number of hours that people were detained, so it is a matter for public record ultimately. Given that the Attorney-General has recently announced that ASIO has identified a number of significant practical limitations associated with its questioning and detention powers, can the minister inform the Senate exactly how many occasions ASIO has been hindered by these limitations when it has sought to exercise its powers? In particular, have these limitations prevented ASIO from questioning an individual for whom it had sought a warrant or have they hindered the questioning of any particular individual?

Senator ELLISON—The Attorney-General has articulated very well the reasons for amendments to ASIO legislation provisions which relate to interpreters and provisions which prevent the flight of a person who is a suspect or the subject of questioning. There are a number of areas that the Attorney has identified. We do not propose to discuss in detail where we see that there is a particular weakness which could then be exploited by those people who do not have Australia’s interests at heart. As Senator Greig would know, we do have legislation on this matter which is due to be debated this week, and the government has made very clear the reason for the amendments. I do not propose to go into any detail which would flag to anyone who is adverse to this country’s interests what weaknesses there may be. Of course, during the course of the legislative process there will be debate on the need for those amendments and we will address that at that time—but certainly I will not go into details which could well signal to people where they could take advantage of weaknesses. (Time expired)

Veterans: Program Funding

Senator WEBBER (2.53 p.m.)—My question is to Senator Coonan representing the Minister for Veterans’ Affairs. Is the minister aware that the Vietnam Veterans Counselling Service provides services to all veterans and families, particularly where stress is an issue of disruption within a family and where stability can be maintained to assist the lives of those affected by their war service? Does the minister recognise that many of the programs run by the VVCS, such as the healthy heart program and others, are very popular for their rehabilitative outcomes and in helping veterans with stress based disorders? Minister, given that this is the case, why have funds been cut for these programs in my home state of Western Australia, with the result that many veterans are losing very beneficial treatments for their conditions?

Senator COONAN—As I said at the start of my answer to Senator Bishop, I should also say to Senator Webber that it is all very well to read out a question but you should really know whether the facts are correct before you make those sorts of allegations about cutting funds. There is no evidence whatsoever that funding has been cut for programs such as the healthy heart program. I sat through estimates and as I recall there was no evidence—ably probed by Senator Bishop—to suggest that there was any cut to these services.

Obviously, the counselling is very important but, as with all of these matters, it is a matter of how the resources are allocated, whether they can be allocated in an efficient way and whether or not the ways in which the funding is expended and the services are assessed meet their mark. Obviously under some circumstances it is appropriate to re-
visit and assess whether or not those kinds of services are in fact meeting the mark and doing what needs to be done for veterans. This government acknowledges that counselling is important and that programs such as the healthy heart program need to be encouraged. So there is no suggestion, as far as I am aware, that funding for counselling has been cut, as is suggested in the question from Senator Webber. I will certainly ask the Minister for Veterans’ Affairs, Mrs Vale, and add to my answer if there is anything further to add.

Senator WEBBER—Mr President, I ask a supplementary question. I assure the minister that funding has been cut in Western Australia. Perhaps while she is checking with the minister she could also advise us whether she is aware of a high level of dissatisfaction with the operation of VVCS in New South Wales, her home state, to the extent that the Repatriation Commission has had to intervene. Is she also aware of the dissatisfaction with the level of help available to assist veterans in emergency situations, particularly with respect to psychiatric care? If so, would the minister report to the Senate at the next available opportunity on the action being taken to remediate these problems with services for Australia’s veterans?

Senator Faulkner—Please read the brief.

Senator COONAN—The programs that were referred to by Senator Webber have not been cut. I can say that, whether I have a brief or whether I have not, simply because I was sitting through estimates and, despite the best efforts of Labor senators, there was no evidence—certainly, there were no conclusive questions and answers—that would enable anyone to conclude that these services were cut. Obviously there are clinical evaluations that take place in respect of many of these programs, and indeed there should be. If there were not clinical evaluations Labor senators would be complaining that this government took no interest in ensuring that these programs met their mark. It is an absolute nonsense to suggest that any of this funding has been cut. In fact, actual expenditure in 2002-03 on these programs was $1.66 million. Once again, Senator Webber should get her facts straight. (Time expired)

Howard Government: Family Policy

Senator HUMPHRIES (2.58 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister outline to the Senate how Australian families are benefiting from the Howard government’s policies? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Humphries for the question. In 1996, when we came into government, we inherited a $96.6 billion debt—a debt that was costing Australians up to $4 billion a year in interest alone. As I have said over and over again in this chamber, and as I will continue to say, the Labor Party was living beyond its means. It was irresponsibly borrowing from the next generation to pay for short-term gain. We had record high interest rates and nearly a million people unemployed—but what else would you expect from a party that cannot actually balance its books?

The Howard government’s position on work and family has been to promote choice. This financial year the government has allocated an estimated $19 billion in assistance to families, through the family tax benefits, child-care benefits, parenting payments and maternity immunisation allowances. In addition, the government has increased the baby bonus to an estimated $170 million in this year. That is providing additional assistance to families following the birth of a first child.

The shadow minister for community services claims that most of this funding is going to high-income families. He has got it
wrong. As Senator Coonan said, they get it wrong so often. In 2001-02, 81 per cent of these benefits went to parents with taxable incomes of $20,000 or less. The Howard government has allocated more than $220 million to the Stronger Families and Communities Strategy. This includes over $110 million to family and community projects and $65 million to support greater choice and flexibility with child-care options.

A New Tax System also has not only decreased effective marginal tax rates and put more money in Australian workers’ pockets but also increased family assistance by about $2 billion a year. We have made it easier for parents by spending more than $7 billion on child care in our first six years in office. That is 70 per cent more in real terms than the spending under Labor. We have made child care more affordable and more accessible. There are now 194,000 more child-care places. We have also given families a top-up when they overestimate their income. Labor never, ever gave families a top-up. We have created 1.3 million new jobs since 1996. Unemployment is now at 5.6 per cent. We have got the lowest number of unemployed customers in a decade and 27 per cent fewer unemployed customers in October 2003 than in March 1993. Long-term unemployed customers are down by 18.8 per cent since 1998.

Senator Humphries asked me about alternative policies. We have the shadow minister for family and community services—and I do not know how long he will be the shadow minister for family and community services—saying he would scrap the baby bonus and introduce paid maternity leave. Essentially what he is proposing is typical of Labor: financially irresponsible. It would take away a significant bonus for working families.

Honourable senators interjecting—

**The PRESIDENT**—Order! There is too much conversation on both sides of the chamber.

**Senator PATTERSON**—Essentially what they are proposing is something that passes the cost on to employers. That is typical of Labor. At the same time, they are taking away the government bonus for families. At the last election, Labor also committed to abolishing the Stronger Families and Communities program, which the Howard government has recommitted $7 million towards.

Now we have a new Labor leader who advocates subsidising low-income groups to gamble on the stock market, taking away funds from families that need it most. We have his parliamentary colleague, someone no less than his shadow parliamentary secretary for family and community services, Mr Albanese, saying a shares subsidy scheme is a non-event. We have *Groundhog Day* all over again. We have the Labor Party divided on policy, and, with a 45 to 47 vote, of course we have a Labor Party divided on leadership. They are offering no incentives for families. In fact, they are abolishing programs that help our working families. The shadow minister, who swans around, has shown again today that, when it comes to delivering the right numbers, Labor cannot be trusted to deliver.

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

**QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS**

**Communications: Funding**

**Senator KEMP** (Victoria—Minister for the Arts and Sport) (3.02 p.m.)—Last week Senator Murphy asked me a question regarding the extension of funding for the BITS program and the public release of two reports on the program. I undertook to provide addi-
tional information to Senator Murphy. I seek leave to incorporate the response, which has been provided by the Minister for Communications, Information Technology and the Arts, in *Hansard*.

Leave granted.

*The answer read as follows—*

The Government is currently considering evaluation reports of the BITS Incubator program (including the Tasmanian incubator) and the BITS Advanced Networks Program. These reports will inform Government in its Budget deliberations. The Government will consider public release of these evaluation reports when decisions on the future of the programs have been taken, subject to the protection of any commercially sensitive information.

**ANSWERS TO QUESTIONS ON NOTICE**

**Question No. 2004**

**Senator HUTCHINS** (New South Wales) (3.03 p.m.)—Pursuant to standing order 74(5), I seek an explanation from the Minister representing the Minister for Health and Ageing, Senator Ian Campbell, as to why an answer to question No. 2004, of which notice was given on 10 September, has not been provided and is now overdue. The question relates to a TGA recall in 1992 of unused product manufactured from possible hepatitis C positive blood plasma.

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads) (3.04 p.m.)—I would like to thank Senator Hutchins for giving me prior notice of this. We have, as a result, followed up the outstanding answer to his question on notice with the minister’s office, and we are hopeful of getting a response as soon as possible. I do thank him for giving us prior notice of this.

**Senator HUTCHINS** (New South Wales) (3.04 p.m.)—I move:

That the Senate take note of the explanation.

I will not take up too much time. Question No. 2004 relates to what is called the Gosford incident, which is referred to in the Barraclough report as an incident where incorrectly labelled hepatitis C positive plasma was sent to the Commonwealth Serum Laboratories by the Australian Red Cross to be used for manufacture of plasma products which are used by sufferers of haemophilia. The minister has already revealed in an answer to an earlier question on notice that quantities of the plasma product Prothrombinex, or PBX, factor XI, was manufactured from hepatitis C positive plasma as a result of the Gosford incident. Heat treatment of such products was undertaken in the early 1990s to kill diseases like hepatitis and AIDS. PBX factor XI was heat treated at 60 degrees Celsius for 72 hours. It has since been found that this was insufficient to remove hepatitis C.

The minister has confirmed this in an answer to an earlier question on notice. Once the mistake was realised, the Therapeutic Goods Administration issued a recall of unused product manufactured from hepatitis C positive plasma arising from the Gosford incident. My aim in this current question, which is No. 2004, is to find out the extent to which this recall may have been successful in preventing users of PBX factor XI from becoming infected with hepatitis C. It is important to ascertain the effectiveness of the TGA’s recall to determine whether or not any Australians were infected with hepatitis C during that period as a result of the Gosford incident.

In essence, question 2004 seeks to determine just how much hepatitis C infected PBX factor XI might have been used by Australians. Accordingly, my question seeks to identify how the recall was undertaken, how much infected PBX factor XI was initially distributed, how much possibly infected product was retrieved in the recall, what
quantity might have already been used prior to the recall, whether or not hospitals and doctors were involved in assisting with the recall—for example, by advising patients and collecting unused product from them—and whether or not at-risk patients were identified and tested for possible infection.

It is vital to ascertain the answers to these questions so that justice may be attained by those individuals who may have acquired hepatitis C as a result of the Australian Red Cross’s mistake in incorrectly labelling hepatitis C positive plasma in 1992. It is also vital to examine the integrity of the TGA’s recall to determine whether or not the TGA did its job properly so that, if not, steps may be taken to ensure that in the future incidents like these are not repeated.

Question agreed to.

The PRESIDENT—Because of the smell and the fumes that are abounding in this area of the chamber and the fact that it is affecting some senators, we will adjourn the sitting of the Senate until the bells ring. Hopefully, our maintenance staff will get to the bottom of this very quickly. There are some noxious fumes floating around here and I think that in the interests of everybody’s safety we should suspend the sitting of the Senate until the bells ring.

Sitting suspended from 3.09 p.m. to 3.34 p.m.

The PRESIDENT (3.34 p.m.)—The Joint House Department has advised that the fumes in the chamber were a result of the control gear and light fitting in the gallery. The circuit has been isolated. It will be fixed during the dinner break tonight. In the meantime we have opened the doors to flush the air out of the chamber. Let us hope that we do not have any more interference with our program.

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.

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

by Senator Brandis (from 98 citizens).

**Telstra: Privatisation**

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

The Petition of the undersigned draws the following issues to the attention of the Senate.

There is widespread concern that services and jobs will be cut back if the rest of Telstra is sold, particularly in outer metropolitan, rural and regional Australia.

A fully privatised Telstra will focus on profits not people; shareholders will be more important than customers.

We therefore pray that the Senate oppose the Liberal/National plan to sell Telstra and that all
Greens, Democrats and Independents join Labor in opposing the sale of Telstra.

by Senator Moore (from 733 citizens).

Education: Higher Education

To the Honourable President and Members of the Senate in Parliament Assembled

Your petitioners believe:

1. Fees are a barrier to Higher Education, disproportionately affecting rural, regional and remote students, students from low socio-economic groups, Indigenous students, and note that participation of these groups since 1996 have fallen back to 1991 levels following the introduction of differential HECS, declining student income support levels, lower parental income means test and reduction of Abstudy.

2. Permitting universities to charge fees 30% higher than the HECS rate will:
   a. substantially increase student debt
   b. create an hierarchical, two-tiered university system

3. And that 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.

We the undersigned therefore call upon the Senate to oppose the Government’s Higher Education package as it fails to deliver an equitable solution for regional students to the current funding crisis. It instead asks students and their families to pay more.

We further call upon the Senate to act to ensure the principle of equitable access to universities remains fundamental to higher education policy and to oppose any bill to further increase fees.

by Senator Stott Despoja (from 10 citizens).

Petitions received.

NOTICES

Presentation

Senator Heffernan to move on the next day of sitting:

That the time for the presentation of the following reports of the Rural and Regional Affairs and Transport Legislation Committee be extended to 11 March 2004:
(a) the administration of the Civil Aviation Safety Authority;
(b) the import risk assessment on New Zealand apples; and
(c) the administration of AusSAR in relation to the search for the Margaret J.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) the Province of Manitoba in Canada has mandated the use, by 2005, of 10 per cent ethanol blends in 85 per cent of gasoline sold and has established a tax preference for ethanol that is produced and used in Manitoba, and
(ii) Manitoba will also establish an Agri-Energy Office, a ‘one-stop-shop’ for information on agri-energy initiatives such as ground bio-diesel, manure methane capture, wind power and ground source heat pumps, and will promote public awareness and education on the environmental benefits of increased ethanol use; and
(b) urges the Federal Government to consider mandating the use of ethanol and other alternative fuels.

Senator Greig to move on the next day of sitting:
That the Senate—
(a) notes that in October 1992, the United Nations General Assembly declared 3 December to be the International Day of Disabled Persons, which has since been renamed in Australia as the International Day of People with a Disability;
(b) notes further:
(i) the enormous contribution that people with disabilities, their families and carers make to their individual communities and the development of the entire Australian community, and
(ii) that this often occurs within a context of ongoing discrimination, disadvantage, and economic and social hardship; and
(c) calls on the Government to undertake a leadership role by ending all forms of discrimination against people with disabilities through the development of a comprehensive International Human Rights Convention for People with Disabilities.

Senator Cherry to move two sitting days after today:
That the Senate—
(a) notes that on 14 October 2003 the Western Australia Farmers Federation Grains Council passed a resolution recommending to the Primary Industries Ministerial Council that:
(i) the Gene Technology Grains Committee be restructured to provide proportionate representation of both genetically-modified (GM) and non-GM growers,
(ii) no costs or liabilities be imposed on a sector of the agricultural industry without the involvement and approval from that industry,
(iii) no sector of agricultural industry be faced with unmanageable problems,
(iv) prior to the introduction of GM crops, the Gene Technology Grains Committee must demonstrate widespread accurate and unbiased industry education of the canola stewardship principles and protocols and proof of widespread acceptance of these principles and protocols,
(v) research be undertaken to gauge market tolerance levels of GM grain prior to acceptance of 1 per cent of adventitious presence, and
(vi) legislative changes be implemented to ensure that compliance with management plans is a legal requirement, not voluntary as proposed, to ensure that the GM industry is responsible for the containment of their GM product; and
(b) calls on the Minister for Agriculture, Fisheries and Forestry (Mr Truss) to ensure that these resolutions are debated at the next Primary Industries Ministerial Council, in recognition of the widespread concern in the grains industry about the introduction of genetically-modified crops and the cost implications for farmers.

Senator Cherry to move two sitting days after today:

That the Senate—

(a) notes that:

(i) Macquarie Broadcasting (the owners of Sydney radio stations 2GB and 2CH) and Southern Cross Broadcasting (the owners of 2UE) have announced that their newsrooms and other elements of their sales and administration departments will be merged,

(ii) 2UE and 2GB are the two largest commercial radio news providers in the country, with news services syndicated to dozens of other stations; and that the merging of their services represents a significant reduction in diversity of opinions in radio, and

(iii) the proposed arrangement appears to be contrary to the objectives of the Broadcasting Services Act 1992 that promote diversity, and may breach the ‘two station’ control rule in the Act; and

(b) calls on the Australian Broadcasting Authority to conduct a thorough review of the proposed arrangement to ensure that the objectives and provisions of the Act have been fully complied with.

Senator Nettle to move on the next day of sitting:

That there be laid on the table, by 3 pm on 4 December 2003, those parts of the audit report on the Sepon mine project in Laos referred to by the Minister for Finance and Administration in his statement to the Senate on 25 November 2003 which relate to the environmental and social impacts of the project.

Senator Brown to move on the next day of sitting:

That the Senate calls on the Prime Minister (Mr Howard) and the Leader of the Opposition (Mr Latham) to promote reform policies to halt logging of the Tarkine, which contains Australia’s largest temperate rainforest.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.35 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the ASIO Legislation Amendment Bill 2003, allowing it to be considered during this period of sittings.
I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

The DEPUTY PRESIDENT—Is leave granted?

Senator Brown—Before I grant leave, I would like to have that explanation.

Senator IAN CAMPBELL—Then I will read the statement:

Purpose of the Bill
The bill will amend the Australian Security Intelligence Organisation Act 1979 to refine ASIO’s intelligence collection capabilities relating to terrorism offences.

Reasons for Urgency
The bill is designed to address practical issues that have been identified in the context of implementing ASIO’s new powers relating to terrorism offences. Failure to take urgent action could detract from Australia’s counter-terrorism capability.

Postponement
Items of business were postponed as follows:

General business notice of motion no. 467 standing in the name of Senator Lees for today, relating to the introduction of the Encouraging Communities Bill 2003, postponed till 13 May 2004.

General business notice of motion no. 542 standing in the name of Senator Mackay for today, relating to the cancellation of the ABC program Behind the News, postponed till 10 February 2004.

General business notice of motion no. 732 standing in the name of Senator Brown for today, relating to detention centres on Nauru and Manus Islands, postponed till 3 December 2003.

FORESTRY: LOGGING
Senator BROWN (Tasmania) (3.37 p.m.)—I ask that general business notice of motion No. 708 standing in my name for today, relating to logging in Tasmania’s Styx Valley of the Giants, be taken as a formal motion.

The DEPUTY PRESIDENT—Is there any objection to this motion being taken as formal?

Senator Mackay—Yes.

The DEPUTY PRESIDENT—There is an objection.

Suspension of Standing Orders
Senator BROWN (Tasmania) (3.37 p.m.)—Pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent Senator Brown moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion No. 708.

In moving this motion for the suspension of standing orders I note that Labor has objected to my general business notice of motion being treated in the usual way. I will read the proposed motion:

That the Senate—

(a) notes the clear fell logging for woodchips in Tasmania’s Styx Valley, which has the world’s tallest hardwood forests and is habitat for Commonwealth-listed rare and endangered species such as the spotted-tailed quoll, Tasmanian wedge tailed eagle and white goshawk; and

(b) calls on the Government to:

(i) protect such habitats, and

(ii) review the potential of the valley to provide more jobs and long-term local investment through tourism.

One has to presume that the government and/or the Labor Party are not going to support this motion. It is not only a very important motion about Tasmania’s future; it is an important motion about Australia’s future. I want to come first to the business of Tasmania’s Styx Valley, which has recently grown enormously in prominence in Australian public discourse. Until 1998, when the Wilder-
ness Society and the Greens recognised not only the magnificence of the forests in the Styx Valley but the enormous threat through clear-fell logging for export woodchips that was already eating away into the valley. Australians by and large did not know about it. We now do.

Let me describe it. This is a valley of some 23,000 hectares, tucked in the central mountains of Tasmania, on the southern and western sides surrounded by the World Heritage wilderness of Tasmania. The valley itself has world heritage values but it has been kept out of nomination for World Heritage listing by political and monetary considerations. The valley is now known to contain the tallest hardwood forests on the face of the planet. To date, the tallest tree that we know is there is 96 metres high. That is the length of a soccer field or a hockey field turned on end. The trees in the forest would extend right up beyond the roadway of the Sydney Harbour Bridge into the archway and overshadow the Opera House if they were to be measured up in Sydney. Yet trees up to 85 metres high are being destroyed under the licence of the Tasmanian government and through the regional forest agreement signed by Prime Minister Howard, and, with them, the species-rich habitat and the rainforest understorey. That includes the vulnerable, rare and endangered species that I have listed.

The process there is one of logging the forests and they are taken out by Gunns for woodchips. We know from today’s announcements—you can read this on page 2 of the Hobart Mercury—that for the first time in Tasmanian history the export of woodchips from Tasmania’s grand wild forests, its eucalypt forests, its rainforests, has exceeded five million tonnes per annum. That is almost a doubling since Prime Minister Howard signed their death warrant in 1997 under the regional forest agreement.

What else has happened since then? There was a promise of 1,000 extra jobs. There was $80 million plus of taxpayers’ money put into the logging industry. In fact, hundreds of jobs have been peeled off. Since woodchipping got going in 1970 in Tasmania 5,000 jobs have been lost, but more than 2,000 of those have been lost since 1990, when woodchipping really got under way in Tasmania in its modern sense, and jobs are continuing to be shed. If you are in Tasmania in the vicinity of the Styx Valley you will see the signs from log truck drivers saying ‘A fair day’s pay for log truck drivers’, who are doing an extraordinarily long term of work for very low pay. This is a scandalous situation.

The one study done into the Styx Valley showed that, while 13 jobs are provided there in destroying these forests, hundreds of jobs would be created if it were to be protected and if it had tourist amenities as a national park and world heritage exhibit glorifying our state, keeping our iconic forests for the whole of this nation and extending them, along with Cradle Mountain, Port Arthur and the Franklin River, to attract visitors from all over the world. It can be done. It should be done. That is the long-term welfare of Tasmania. It is in the Commonwealth’s hands to do that. This has been blocked by the Labor Party in Tasmania. Under Mr Latham’s leadership, here is a first challenge: break away from the Howard destruction of our grand forests and wildlife and make a stand for future generations. Let us see Latham Labor put an end to this destruction of the great forests of Tasmania and these icons for this nation. (Time expired)

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.43 p.m.)—Most senators would not be shocked to know that we will be opposing the motion to suspend standing orders. Briefly, I want to say that
colouring the performance of this government in relation to forests and forest policy in anything other than very glowing terms would be contrary to the truth. It suits Senator Brown’s political motives and personal motives to seek to colour our performance otherwise, but the reality is that this government in very good faith pursued what was government policy prior to us winning the 1996 election, and that was for the implementation, very rigorously, of the national forest policy statement. That statement, which was signed by all Australian state and territory governments in 1992 at the time of the Labor government under the then Prime Minister Paul Keating—but I believe the process was well and truly started by Prime Minister Hawke—was a significant achievement because it achieved a national set of policy outcomes between federal, state and territory governments, something which is always difficult regardless of the political make-up of those governments.

This government set out to achieve regional forest agreements across Australia. The public policy achievement with those agreements, again, is quite substantial. You could disagree forever about the detail of any one of those agreements or, in fact, in Senator Bob Brown’s case, all of the agreements, because if he actually did concede that the outcome was favourable for Australia’s environment then he would have no reason to exist politically, he would not have a job, he would not qualify for superannuation and he would have to find something else to do. There is no way that he could possibly give any credit to the hundreds of Australians and politicians from both parties who have put enormous effort into seeking to achieve a significant outcome for the Australian environment which outperforms all the internationally accepted benchmarks set, for example, by the World Wide Fund for Nature and the world conservation region. For example, all Australians should be proud to know that the Australian government—I give credit where it is due to the Labor Party in government prior to us for setting up the national forest policy statement and the process—and the Australian state and territory governments have signed the agreements and achieved more than 40 per cent of the pre-1750 extent of forest types on public land in the regional forest agreement regions reserved from harvesting, greatly exceeding the 10 per cent reservation proposed by the world wide fund.

In relation to Tasmania, the agreement has increased the size of the conservation reserve system by 19 per cent to now comprise 2.75 million hectares, which accounts for 40 per cent of Tasmania and 68 per cent of the public forest. Ninety-five per cent of Tasmania’s high-quality wilderness is now protected and is not available for timber harvesting. In relation to the Styx Valley area, which Senator Brown’s motion refers to, there are now only 13,400 hectares of the 34,000 hectares of the Styx Valley area available for timber harvesting and the area itself produces a mosaic of forests which are simultaneously used for ecotourism, production forestry and conservation activities. It is a model use of a forest made possible by a regional forest agreement, management by the state government of Tasmania and an agreement with the national government of Australia.

It also protects the important interests of those who are employed by the forest and wood products industries, which employ 86,000 people across Australia. These are people who Senator Brown would forget and throw out in the cold without a job. You cannot have forest tourism in every single forest everywhere in Tasmania and in Australia to reproduce jobs in the timber industry. It is an important industry; it is a sustainable industry; it is a renewable industry and it is an industry that this government supports in
balance with sound environmental practices, sustainable forest practices and conservation.

(Time expired)

Senator O’BRIEN (Tasmania) (3.48 p.m.)—The opposition will not be supporting this motion for the suspension of standing orders. This is a proposed resolution which deserves to be debated at the appropriate time when Senator Brown moves a general business item, because we will be debating it to establish that it represents matters which are not factual. Let us look at the question of the half-truths in this motion and others which the Greens seek to sell to the Australian people.

The facts about the Styx Valley are that most of it has been working forest since the 1930s. Over 80 kilometres of logging roads have been built in that valley since that time in order to harvest stands of timber. Much of this harvesting was done by the former Australian newsprint mills in order to produce newsprint at their Boyer mill instead of importing it. Today, Norske Skog continues to produce newsprint from this forest in this valley, which is, I say again, regrowth forest following past fires and logging. The forests in the valley continue to be a very important resource of very high-quality sawlogs and veneer logs supplying a number of sawmills and the veneer plant at Boyer in the Derwent Valley.

Current land use arrangements in Tasmania’s forests including the Styx Valley were made as a result of the Tasmanian Regional Forest Agreement in 1997. The environmental, social and economic values of the forest were studied as part of that process and a balanced outcome was agreed to by the Tasmanian and Australian governments. During that process, very few submissions from the Tasmanian community mentioned the Styx. Only small parts were ever nominated for the Register of the National Estate or were part of the Wilderness Society’s greenprint for a World Heritage area. Most of these areas are now in reserves.

The Styx Valley catchment is approximately 34,000 hectares—3,000 of which is private property. Of the 31,000 hectares of public land, 8,400 or 27 per cent is in the Southwest National Park, including representative examples of very tall eucalypt forests and rainforest and a further 9,200 hectares or 30 per cent are in other types of reserves including the tallest forest stands over 85 metres in height. Over half of the Styx is thus protected. Much of the remaining forest available for sustainable wood production has already been harvested and regenerated, so it is not old growth in the main. The forests of the Styx are being harvested; they are not being clear-felled for woodchips as outlined, because they produce very high-quality sawlogs and veneer logs. But you will see in the motion that is what Senator Brown would have the Senate and the Australian public believe. They are being logged for high-quality sawlogs and veneer logs. I say it again: pulpwood is an inevitable by-product of this harvesting; some of that pulpwood is used for domestic paper making and some is exported. That is the situation that we are looking at in relation to this motion.

I note in today’s Sydney Morning Herald that an agreement between forest companies, Canadian Indians and environmental groups to conserve around 50 per cent of Canada’s sub-Arctic boreal forest is being hailed by some environmental groups as: ...

... the most sweeping forest and wetland conservation agreement ever reached in Canada.

That is high praise for an agreement that conserves, in that case, 50 per cent of old-growth forest. If only the Australian Greens were able to recognise that the Tasmanian RFA protects 86 per cent of old-growth for-
est on public land and 68 per cent overall. If the Canadian agreement is a world-class agreement, what does that make the Tasmanian agreement? It makes it the best in the world.

Under the RFA, nearly one million hectares of old-growth forest are protected from logging, and it is worth noting that less than three per cent of old-growth forest will be logged over the next 10 years. But I would not expect Senator Brown or the Australian Greens to tell the Australian people about that fact—and it is a fact. What we see with this motion today is a proposal which would have the Senate mislead the Australian people. It is important that it not go through on the nod. When Senator Brown has the opportunity to debate it in general business, no doubt he will take it, but we will not be supporting a suspension today when there is other important business before the Senate.

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

The Senate divided. [3.57 p.m.]
(The Deputy President—Senator J.J. Hogg)

Ayes........... 9
Noes........... 43
Majority........ 34

AYES
Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Greig, B.
Harris, L. Murray, A.J.M.
Nettle, K. Ridgeway, A.D.
Stott Despoja, N.

NOES
Abetz, E. Barnett, G.
Bishop, T.M. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Campbell, I.G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Collins, J.M.A.
Conroy, S.M. Cook, P.F.S.

* denotes teller

Question negatived.

COMMITTEES
Privileges Committee
Reference
Senator McGauran (Victoria) (4.02 p.m.)—At the request of Senator Heffernan, I 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.

Question agreed to.

BUSINESS

Days and Hours of Meeting

Senator Ian Campbell (Western Australia—Manager of Government Business in the Senate) (4.02 p.m.)—by leave—I move the motion as amended:

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 11.30 pm; and

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

Question agreed to.
INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Senator STOTT DESPOJA (South Australia) (4.03 p.m.)—I move:

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.

Question agreed to.

TRADE: FREE TRADE AGREEMENT

Senator BROWN (Tasmania) (4.03 p.m.)—I move:

That the Senate, noting that the Australia-United States free trade agreement is in the final stages of negotiation, calls on the Government to:

(a) carry out an environmental impact assessment of the agreement prior to its signing and ratification; and

(b) ensure that the agreement does not inhibit Australia’s ability to reduce greenhouse gas emissions, including by giving United States coal and electricity companies the right to challenge or seek compensation from Australian governments which act to ameliorate global warming.

Question agreed to.

TRADE: FREE TRADE AGREEMENT

Senator RIDGEWAY (New South Wales) (4.04 p.m.)—by leave—I move the motion as amended:

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.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Extension of Time

Senator RIDGEWAY (New South Wales) (4.05 p.m.)—by leave—I move the motion as amended:

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 24 June 2004.
Question agreed to.

Foreign Affairs, Defence and Trade References Committee

Meeting

Senator BUCKLAND (South Australia) (4.06 p.m.)—At the request of Senator Cook, I move:
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.
Question agreed to.

Membership

The DEPUTY PRESIDENT—The President has received a letter from a party leader seeking variations to the membership of various committees.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.06 p.m.)—by leave—I move:
That Senator O’Brien be appointed as a participating member of the Finance and Public Administration Legislation and References Committees.
Question agreed to.

DOCUMENTS

Tabling

The DEPUTY PRESIDENT (4.07 p.m.)—On behalf of the President, I present the Register of Senate Senior Executive Officer’s interests incorporating notification of alterations of interests of senior executive officers lodged between 20 June and 27 November 2003.

COMMITTEES

Senators’ Interests Committee

Report

Senator DENMAN (Tasmania) (4.07 p.m.)—In accordance with the Senate resolution of 17 March 1994 on the Declaration of Senators’ Interests, I present the Register of Senators’ Interests incorporating notifications of alterations of interests of senators lodged between 20 June and 27 November 2003.

Joint Standing Committee on Public Works

Reports

Senator McGAURAN (Victoria) (4.08 p.m.)—On behalf of the Chair of the Joint Standing Committee on Public Works, Senator Ferguson, I present three reports of the committee as follows: No. 14 of 2003—Development of off-base housing for Defence at Queanbeyan, NSW; No. 15 of 2003—Proposed respecified Christmas Island immigration reception and processing centre; and No. 16 of 2003—Proposed community recreation centre on Christmas Island. I seek leave to move a motion in relation to the reports.
Leave granted.

Senator McGAURAN—I move:
That the Senate take note of the reports.
I seek leave to incorporate a tabling statement in Hansard.
Leave granted.
The statement read as follows—
Development of off-base housing for Defence at Queanbeyan, NSW
The Committee’s fourteenth report for 2003 addresses a proposal by the Defence Housing Authority to construct 40 dwellings at the former Pitch and Putt golf club site in Queanbeyan, NSW.
These works are required to accommodate an expected increase in Defence personnel in the Canberra-Queanbeyan region over the next few years.

Based on the housing preferences of Defence personnel, the dwellings will comprise 33 free-standing homes and seven townhouses. Other works will include the construction of internal roads and footpaths, and reticulation of essential services and telecommunications. It is estimated that the works will cost $12 million.

In response to community suggestions, the Defence Housing Authority also intends to excise the existing golf club house and associated car park from the development, and to offer it for sale as a child care centre. At the public hearing, the Authority stated that the details of the proposed child care facility had yet to be determined. Witnesses added that if the proposal should prove to be unfeasible, the Defence Housing Authority would consider building additional dwellings at the site.

The Committee questioned the Authority about the nature of the proposed development, and is satisfied that it will fit comfortably within the surrounding community and will offer a suitable level of amenity to residents.

The Committee commends the Defence Housing Authority on the community consultation undertaken in respect of the proposed development. The Committee notes that the Authority has altered traffic flow within the development in response to community concerns and that an agreement has also been reached with the local racing club regarding the use of storm water from the site.

The Committee therefore recommends that the work proceed at the estimated cost of $12 million.

**Proposed respecified Christmas Island immigration reception and processing centre**

The Committee’s fifteenth report deals with the respecified Christmas Island Immigration Reception and Processing Centre.

The project was referred by the Department of Finance and Administration at an estimated cost of $197.7 million. It is intended to deliver:

- appropriate facilities for the humane detention of unauthorised boat arrivals;
- an efficient and secure facility appropriate to the location; and
- cost-effective execution of the government’s policy of processing unauthorised arrivals on Christmas Island.

The proposed respecified IRPC differs from the facility originally proposed by the government in March 2002 in that the size has been reduced from twelve fifty-bed compounds with fifty contingency places in each, to eight such compounds. This has allowed for the provision of additional open space within the facility.

In considering the IRPC project, the Committee sought to confirm that the need and scope of the project justifies the proposed expenditure.

The Committee was informed that, although the number of unauthorised boat arrivals has dropped significantly since 2001, the government does not wish to be complacent. The location and scope of the proposed facility are therefore consistent with the government’s policy of processing unauthorised arrivals off-shore.

The Committee was also assured that monies spent on the original IRPC project would not be wasted as a result of the respecification.

The Committee wished to know why responsibility for the project had been transferred from the Department of Immigration and Multicultural and Indigenous Affairs to the Department of Finance and Administration in February 2003. Finance explained that it had the most experience in delivering large capital works projects using a traditional delivery strategy.

The Committee was assured of the relevant experience of the project architects, and of the ongoing involvement of Department of Immigration and Multicultural and Indigenous Affairs in the design and functionality of the facility.

During its inquiry, the Committee examined the nature of the proposed accommodation, the suitability of building materials and services and the compliance of the facility with all relevant guidelines and legislation. The Committee particularly recommends that consideration be given to the
island’s harsh climate in the selection of building materials. The Committee is also concerned to ensure that the project should maximise benefits to the local Christmas Island community, whilst minimising any negative impacts. In particular, the Committee notes the very practical suggestions submitted to the inquiry by the Christmas Island Chamber of Commerce, and recommends that the Department of Finance take note of the submission and continue discussions with the Chamber and other relevant organisations. The Committee recommends further that the work proceed at the estimated cost of $197.7 million.

Proposed community recreation centre on Christmas Island

The Committee’s sixteenth, and final, report for 2003 examines the proposal by the Department of Transport and Regional Services to construct a community recreation facility on Christmas Island, at an estimated cost of $8 million. The works are required to replace existing inadequate facilities and to cater for an expected increase in the island’s population. The proposal comprises a multi-use recreation centre and associated parking areas, fencing and services. The Committee was concerned to learn at the public hearing that no arrangements had been made by the Department of Transport and Regional Services for the ongoing management and maintenance of the new facility. The Committee requested that the Department develop a forward management plan for the centre, and recommends that it negotiate a settlement with the Christmas Island Shire Council to clarify management issues prior to construction.

During the inquiry, the Committee sought to ensure that the proposed facility is suitably located, will be readily accessible to island residents, and that all relevant parties have been consulted on the project. The Department stated that consultation has been undertaken through the Administrator’s Advisory Council.

In view of submissions received, however, the Committee recommends that the Department not only continue its discussions with this body, but also that it undertake continuing consultation with the local school and the Christmas Island Cricket and Sporting Club, both of whom have an interest in the development.

As with the IRPC, the Committee requests that the Department of Transport and Regional Services take cognisance of the island’s climatic conditions in the selection of building materials and equipment, and recommends that construction of the proposed recreation facility proceed at the estimated cost of $8 million.

Public hearings into both Christmas Island works were held in Canberra in October this year. The Committee notes the disappointment expressed by some Christmas Island residents that hearings were not held locally, however the Committee visited the island in 2002, and is therefore familiar with the sites of the proposed works.

Moreover, the Committee is aware of the importance of the recreation facility and IRPC projects to the social and economic life of the island. Had the Committee chosen to visit the island, consideration of the works could not have taken place until 2004. The Committee does not believe a delay of this magnitude to be either necessary or desirable.

In closing I would like to extend thanks to my Committee colleagues for their support and hard work throughout what has been a very busy year.

I commend these Reports to the Senate.

Senator ROBERT RAY (Victoria) (4.09 p.m.)—I want to welcome the report on the proposed respecified Christmas Island immigration reception and processing centre. Also, I have the opportunity to thank the minister at the table for his reference of this matter to the Public Works Committee. We did have some difficulties with this when it was an immigration department project. It was to be fast-tracked; it was not to be referred to the Public Works Committee—a decision, incidentally, I agree with. There was a degree of urgency and it is not always possible in some projects to have the full consideration of the Public Works Committee.
What then happened was that the matter was deemed not so urgent, the construction of it was reassigned to the Department of Finance and Administration and they then proposed to use the existing exemption as granted, even though it was nowhere near as urgent a project. Of course, the financing and the scope of the project had changed fairly dramatically. I gave notice of a motion almost unprecedentedly to have the Senate refer this matter. Senator Minchin, having been apprised of the issue, intervened with other ministers and had the matter properly referred to the Public Works Committee. We now have the benefit of the report today. I do not think it can be argued that it has in any way inhibited the progress of the project. I thank the minister at the table. I think due process has occurred and I welcome it.

Senator BROWN (Tasmania) (4.10 p.m.)—I will briefly comment on this matter because, inter alia, it is about the spending of some $200 million on the detention centre for asylum seekers on Christmas Island. The Greens are totally opposed to that vast sum—if you do not take inflation into account, it is twice the cost of the Opera House—being spent on a detention facility which has no place in a proper thinking Australia. This is Pauline Hanson policy being put into action by the government. It should be vigorously opposed by the Labor Party. It will be the first test of the leadership of the honourable Mark Latham, the member for Werriwa, who has just become—

Senator Robert Ray—He is not honourable because he has never been a member of the Executive Council.

Senator BROWN—He is as honourable as any other member of the place.

Senator Robert Ray—That is a different thing.

Senator BROWN—At Senator Ray’s insistence, he is honourable with a small ‘h’. It is the first test of his leadership that this policy be altered. A great number of Labor Party voters and potential Labor Party voters will thank the Latham Labor Party for departing from the loss policy of the last few years, which has lined up with the Howard government. How could the Labor Party support $200 million of taxpayers’ money going into a detention facility—effectively a jail—on Christmas Island, which is going to cost taxpayers up to $600 a day for those people who are incarcerated? This is more than first-class hotel accommodation, because of the sheer expense of servicing, from mainland Australia, a detention jail on Christmas Island.

It has already cost taxpayers hundreds of millions of dollars to service the Howard government’s policy of deterring and taking away from asylum seekers their internationally validated right to be processed as asylum seekers in Australia. As Mr Howard has found very recently, at least 90 per cent of the people coming by boat fall into that category. But under this policy—presumably supported by Labor until now—they are to be taken to offshore places. And we know what a hellhole Nauru is. We know what a hellhole it has been for the people on Manus Island. It is now being incorporated into Australian territory on Christmas Island at huge expense to the taxpayers. It is a Howard policy gone wrong, and it is one that Labor should distance itself from. Nothing can be said to remediate the affront to the Australia that I know and love that is incorporated in this repugnant and inhumanitarian policy which will result in people being incarcerated on Christmas Island at a vast and unnecessary expense to the Australian taxpayers and to the detriment of the rights of human beings seeking a safer life than whatever cruelty and threat they and/or their families have fled from in another part of the world.
The Greens are going to vigorously defend the right of Australians to be part of the international humanitarian community which says, ‘We must treat people fleeing terror as human beings, and the right thing to do is to process them as quickly as possible.’ Sure, send home those who are not genuine but incorporate those who are asylum seekers into our Australian community. We know from experience that they are vigorous contributors to the Australian community and, if the government’s ears are open, to the Australian economy as a flow-on. This is an unacceptable, dastardly policy. It is a wrong use of taxpayers’ money as well and it should be opposed at every point down the line—and that is what the Greens will be doing with it.

Question agreed to.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002 [No. 2]

First Reading

Bill received from the House of Representatives.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.16 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 MINCHIN (South Australia—Minister for Finance and Administration) (4.16 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—

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002 [No. 2]

Technological progress and globalisation are changing the structure of media markets and patterns of media consumption both in Australia and overseas. Consumers are no longer confined to the traditional media of radio, free-to-air television and newspapers available in their local area. And existing and potential media operators are forging innovative commercial strategies to secure their position in the new market place. Internationally, media businesses are being driven by the imperative of delivering readily adaptable content across multiple platforms. Consolidation and diversification have created substantial global communications groups.

The Government has long maintained the view that the regulatory framework for ownership and control of media assets in Australia unnecessarily constrains this sector within outdated and, in the long term, detrimental regulatory structures. Existing restrictions impede commercial flexibility and access to capital for infrastructure and content investment. They hinder the ability of Australian media organisations to succeed and grow in the new international market.

At the last federal election, the Government committed itself to reforming the foreign and cross-media ownership restrictions in the Broadcasting Services Act 1992 (BSA). The Broadcasting Services Amendment (Media Ownership) Bill 2002 (the bill) seeks to give effect to this commitment.

The Government’s proposed reforms will improve the ability of Australian media companies to invest in new technologies. They will enable media companies to grow and expand in the new content-driven converging global media environment. And they will ensure that Australian consumers have access to high quality media products.

When the Government originally introduced its cross-media reforms, it invited sensible debate on these important media ownership issues. The Government’s response to the report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on the bill, and to the debate on the bill in the
Senate, reflects the Government’s willingness to take into account the genuine concerns of Senators while still achieving substantial reform.

I turn now to the specific measures contained in the bill.

The current foreign ownership and control restrictions in the BSA, which apply to free-to-air and subscription television services, serve as a major deterrent to investment in Australian media organisations.

The bill therefore repeals the media-specific foreign ownership and control restrictions contained in the BSA. Foreign ownership of Australian media assets will continue to be regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia’s general foreign investment policy. These provisions have the ability to address national interest concerns that might arise in relation to a particular investment.

Repealing these restrictions will improve access to capital, increase the pool of potential media owners and act as a safeguard on media concentration.

I turn now to measures to reform the cross-media rules.

Reform of the cross-media rules will clear the way for renewed market interest in Australian media assets. They will allow media companies to take greater advantage of investment opportunities as they arise.

The proposed changes will not affect existing limits in the BSA in relation to audience reach and the maximum numbers of commercial broadcasting licences that can be controlled in the same licence area.

The Australian Competition and Consumer Commission will also continue to have an important role to play in considering the competition effects of mergers. The bill in fact provides assurances that nothing in the bill, or in the ownership and control provisions as a whole, prevents the Trade Practices Act from applying to cross-media acquisitions.

The bill authorises the Australian Broadcasting Authority (ABA) to grant cross-media exemption certificates on application. The ABA must maintain a Register of active cross-media exemption certificates which is to be available on the Internet.

Holders of exemption certificates are not in breach of the cross-media rules in relation to the media entities which they control, provided the conditions of the certificate are satisfied, and they satisfy the separately-controlled newspaper test and provided an unacceptable three-way control situation does not exist. Linking control of more than one associated newspaper to continuing exemption from the cross-media rules will ensure that a cross-media exemption certificate holder will not be able to, over time, control both or all of the newspapers in a licence area. Certificates become active upon a person assuming control of two media entities in a way that would otherwise breach the cross-media rules.

The Government is committed to ensuring ongoing diversity of opinion and information in the Australian media. The Government recognises the need to ensure that media owners do not exploit their co-ownership of media organisations in a way that prevents those organisations from exercising separate editorial judgements.

To this end, the bill provides for a transparent and effective test in relation to maintaining separate editorial decision-making responsibilities in cross-controlled media organisations. An exemption certificate can only be issued if the ABA is satisfied that the conditions included in the application will meet the objective of editorial separation for the set of media operations concerned. This objective is that separate editorial decision-making responsibilities must be maintained in relation to each of the media operations.

Three mandatory tests are prescribed for the objective of editorial separation to be met. They are the existence of:

(a) separate editorial policies;
(b) appropriate organisational charts; and
(c) separate editorial news management, news compilation processes and news gathering and interpretation capabilities.

These requirements will not preclude the sharing of resources or other forms of co-operation in newsgathering between organisations that could assist owners seeking to realise efficiencies from jointly owned organisations.
The bill provides that once an exemption certificate is active in relation to a set of media operations, those media operations must meet the objective of editorial separation as a condition of their licence.

The BSA gives the ABA the ability to investigate bona fide complaints of failures to adhere to licence conditions and to publish the outcome. If the ABA determines that a licensee has failed to comply with the editorial separation condition, it may issue a notice requiring the licensee to address the contravention within a specified timeframe. Failure to comply with the ABA notice is a criminal offence, which can result in a large fine being imposed. The ABA is also able to suspend or cancel a licence if a licence condition is breached. Such action may be appropriate in the case of repeated or severe breaches of the editorial separation condition.

Prior to issuing an exemption certificate, the ABA must also be satisfied that the proposed merger will satisfy the minimum number of media groups test. The test applies to all media operations, other than remote areas, and provides a guarantee that a media merger resulting from a cross-media exemption certificate will not result in fewer than four media groups in markets in regional Australia, or five media groups in the larger markets of the state capitals. This provides another assurance of diversity in the media sector and will prevent any mergers in some smaller markets in regional and metropolitan Australia which will not have the minimum number of media groups required to allow any merger activity.

The bill will also ensure that no person in any market may control more than two types of media covered by the cross-media rules (the ‘two out of three’ rule). The ABA must not issue a cross-media exemption certificate if it would enable a person to be in a position to control all three types of media in a single market.

Relevant media include commercial television broadcasting licences; commercial radio broadcasting licences; and associated newspapers (the BSA defines a ‘newspaper’ as an associated newspaper that is in the English language and is published on at least four days in each week, but does not include a publication if less than 50 per cent of its circulation is by way of sale).

Small local newspapers are included in the ‘two out of three’ rule in regional areas in certain circumstances. Any media group with accumulated holdings of local newspapers which together have a circulation of 25 per cent or greater in the licence area will be subject to the two out of three limit as if it held an associated newspaper. This means that small newspapers that provide relevant local voices will be counted in the application of the two out of three rule.

The bill also provides that a cross-media exemption certificate will have no effect if the holder controls more than one newspaper in the relevant market, either at the time of application for the exemption certificate or in the future. This provides additional reassurance that diversity of opinion will be maintained.

The bill imposes a general obligation to disclose a cross-media relationship on media outlets subject to the same exemption certificate.

The bill details two means of disclosure:

- the ‘business affairs’ model, which will apply to commercial television broadcasters and newspapers, and which will be the default disclosure model for commercial radio broadcasters; and
- an alternative ‘regular disclosure’ model which will only be available to commercial radio broadcasters.

The Government recognises public concern about declining levels of local and regional news and information programs on both television and radio. Local services are important for developing community identity and for ensuring that important information is relayed in a timely fashion.

The bill amends the BSA to impose a condition on commercial radio broadcasting licences that have regional licence areas. This condition requires them to comply with prescribed minimum levels of local news and information services or to retain existing levels of local news and information where these are higher than the prescribed minimum.

The prescribed minimum levels include at least five news bulletins per week containing matters of local significance, broadcast of local community service announcements and the ability to...
broadcast emergency warnings if and when re-
quired.

The bill contains a provision requiring the ABA to
impose licence conditions that require all com-
mercial television broadcasters in four regional
aggregated commercial markets, as well as Tas-
mania and the metropolitan markets, to broadcast
a minimum amount of material of local signifi-
cance.

The ABA has already imposed such conditions in
relation to the regional aggregated markets of
regional Queensland, northern New South Wales,
southern New South Wales and regional Victoria.
This was a result of its 2002 inquiry into the ade-
quacy of local television news and information
programs in rural and regional Australia. The
inclusion of this requirement in the bill is de-
signed to ensure that these conditions will con-
tinue to be in force in the future.

The bill also extends the requirement for the ABA
to impose licence conditions to include Tasmania,
which was not included in the ABA's inquiry, and
the metropolitan markets (the mainland State
capitals). This will ensure that broadcasters in
these markets also satisfy their audience's need
for local news and information. The requirement
for the ABA to impose a relevant licence condi-
tion on broadcasters in these markets will enable
a proper investigation to be undertaken into the
appropriate level of local content for those mar-
kets.

The bill also allows datacasters to show programs
that deal with local sporting events. This change
has the potential to allow sport not previously
broadcast on free-to-air television to be televised
under a datacasting licence to increase coverage
of local sporting events and to assist in promoting
local sport.

The Government is concerned to maintain a di-
verse range of commercial radio services of broad
general appeal, especially in regional areas.
Therefore, the bill prohibits contracts and ar-
rangements that attempt to restrict the program
format of commercial radio broadcasting services.
These provisions address a situation where con-
tractual or other arrangements limit the program
format of a commercial radio service, reducing
the diversity of radio services and competition for
audience and advertisers, particularly for the
benefit of an incumbent commercial radio broad-
caster. Civil penalties, including fines of up to
$275 000 for a body corporate, will apply for
entering into such contracts or arrangements. Fur-
thermore, the bill renders the contract or ar-
rangement void.

As well as written contracts, the prohibition will
also apply to agreements or understandings that
do not constitute legally binding contracts. An
arrangement of this sort could be formal or in-
formal, written or unwritten.

The prohibition will not apply to contracts or
arrangements exempted by regulation. The ABA
will also have the power to exempt particular
contracts or arrangements. This is intended to
allow some flexibility once the provisions com-
mence, where there are legitimate types of trans-
actions that should not be prevented.

The proposed changes will not affect the ability
of the ACCC to scrutinise both existing and future
arrangements that might have the effect of limit-
ing competition.

The bill restricts the circumstances in which an
approval of a temporary ownership or control
breach could be granted under section 67 of the
BSA. These provisions will restrict the capacity
of broadcasters to use the temporary approval
mechanism to engage in conduct designed to
manage regional radio markets.

The bill forms an integral part of the Govern-
ment's commitment to respond to the rapidly
changing communications sector, with progres-
sive communications policies which reflect
evolving market conditions. Hence it is logical
that the Government include a provision in the
bill which will ensure the media ownership rules
retain their currency in the near future and be-
yond. The bill therefore requires a statutory re-
view to be undertaken of the broadcasting owner-
ship and control provisions contained within Part
V of the BSA, and tabled by 30 June 2007.

The bill will ensure that Australian media organi-
sations, as well as the Australian public, are posi-
tioned at the forefront of an exciting new com-
munications era.

Debate (on motion by Senator Buckland) adjourned.
BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

Maritime Transport Security Bill 2003
Non-Proliferation Legislation Amendment Bill 2003

ASSENT

Messages from His Excellency the Governor-General were reported informing the Senate that he had assented to the following laws:

Communications Legislation Amendment Act (No. 1) 2003 (Act No. 114, 2003)

ASIO LEGISLATION AMENDMENT BILL 2003

Referral to Committee

Senator BROWN (Tasmania) (4.18 p.m.)—I move:


One of the problems here is that we need a feisty, strong Labor Party which is prepared to stand up for Australia and the rule of law in this country as we have enjoyed it, been protected by it and been enhanced by it as a society over the last century. But, if I am not wrong, at the first test after the logging motion we saw a moment ago, of defending the rights of Australia against this serial erosion from the Howard government, the Latham opposition is going to fail. It is going to fail and go weak at the knees. It is going to side up with Mr Ruddock and Mr Howard. What a parlous situation for Australia if that is the case—and we will hear in a minute. What a parlous situation for Australia if they are going to give the assent to this legislation enhancing the powers of ASIO but cutting right across the rights of Australians.

Let me give a very brief outline of what this bill can do—this bill that we want referred to a committee so that the Australian community, including the legal community, can feed back in the time-honoured way to the Senate. I am quoting here from Joo-Cheon Tham, the associate lecturer in law at La Trobe University, who says in an article entitled ‘New ASIO bill poses grave threat to Australia’s democracy’:

Consider the following scenario:
The Australian Security Intelligence Organisation (ASIO) exercises its newly acquired detention powers and detains Jim, a person ASIO suspects of having information related to terrorism. Soon after, Jim’s detention comes to the knowledge of, Samsara, an Age journalist—a newspaper journalist—who suspects certain irregularities. She suspects that Jim might, in fact, be fifteen and hence, cannot be legally detained by ASIO. She also has evidence that Jim has been kept in detention for more than seven days; the legally prescribed maximum. Kay then rights up a feature article highlighting Jim’s circumstances.
As a result of Kay’s article, Jim’s case is taken up by Lim, a federal parliamentarian, who publicises details of Jim’s detention and calls for ASIO to act within the confines of the law. Jim is eventually released with ASIO conceding that he has no present or past connection with terrorist activity.

If a Bill that is presently before federal parliament is passed, the actions of both Kay—

the journalist—

and Lim—

the politician—

will be illegal. More than this, such actions will remain illegal for two years after Jim’s detention.

The ASIO Legislation Amendment Bill 2003 proposes to criminalise public discussion of much of ASIO’s activities by introducing broad-ranging offences.

This Bill, if passed, will mean that it will be generally illegal to disclose information relating to ASIO’s conduct in detaining and questioning persons while a detention/questioning warrant is in force. For instance, recent reporting by Martin Chulov, an Australian journalist, on the compulsory questioning by ASIO of Willie Brigitte’s acquaintances will be illegal under this Bill.

More importantly, for two years after the expiry of such a warrant, it will generally be an offence to disclose information related to such a warrant, which is ‘operational knowledge’. This innocuous-sounding term is, however, defined to mean, in effect, all knowledge relating to ASIO’s activities.

Here we have the situation where ASIO has committed a breach of the law twice but if a journalist reports it she faces five years jail. If a member of parliament publishes the report outside the parliament, he faces five years jail. And anybody related to the supposed boy Jim—relative, associate or school friend—who passes on information about his detention also faces five years jail even though ASIO is the defaulter right down the line.

How can this parliament and this opposition accept that such legislation should be passed through this honourable parliament which stands for democracy, liberty and the Australian freedom that the Prime Minister talks about so much? Moreover, how could any opposition worth its name turn down a motion to refer this to the proper committee so that there can be feedback from the legal community; non-government organisations; Amnesty International, which backs this motion; Liberty Victoria—or the Victorian Council for Civil Liberties, as it was formerly known—which backs this motion; and senior academics in law who back this motion? Are we to see here on the first day of the Latham opposition a shouldering-up to the Howard government to say, ‘Let’s cut more Australian liberties. Let’s cut more Australian laws. Let’s put a blanket over even illegal activity by ASIO in the name of this parliament’?

This is not a concession that is going to improve the defence against terrorism in this country; this is a concession to terrorism in this country. This is giving away essential civil liberty rights and laws at the front door of this country, for a political purpose by the Howard government in the name of Attorney-General Ruddock—a past master at boxing the Labor opposition into a corner and then making them squeak. That is what is going to happen here; there is more to follow. In a friendly fashion, I warn the Labor Party and the new Leader of the Opposition, Mr Latham: if you concede on this—if you do not even hold an inquiry or allow the public to feed into this debate because the government wants to ram this bill through the Senate tomorrow—you will concede on anything in this field. We are defending democracy here—because democracy is built on the right to know, the right to information and transparency in government. Surely you have to have organisations like ASIO, which collect information for the defence of the common good, but you should not allow
ASIO then to extend a mantle of illegality on people who would report on it, scrutinise it and, from outside, make sure it does the right thing.

This is obnoxious legislation. It has no place in this parliament. I say to every opposition member present—and through them to their new leader, Mr Mark Latham—that if you fall on this, fail to even have an inquiry and lock the public out of discussion on a bill which erodes essential time-honoured rights of the Australian people, you will have joined John Howard. Mr Latham, right on your first day as Leader of the Opposition, if you turn down this Greens motion which says that this bill should go to a committee so the Australian people and experts in the field can feed into it and inform us as parliamentarians—which would be prudent, to say the least—then you are joining Mr Howard and Mr Ruddock in their rush, in the false name of security for the Australian people, to truncate our laws and take away the rights of 20 million Australians. It cannot be countenanced. It is not on. Labor should be ashamed of itself, and its new leader should be ashamed of himself if he allows this process of not even allowing scrutiny of this legislation in this parliament before it gets rammed through tomorrow. I hope Labor will reconsider and support the Greens motion.

Senator LUDWIG (Queensland) (4.29 p.m.)—The opposition has carefully scrutinised the detail of the ASIO Legislation Amendment Bill 2003 and notes it is designed to improve the machinery of the questioning regime put in place by the parliament earlier this year. We also note that the bill does not change the framework of ASIO’s new questioning regime. Nevertheless, given the controversy surrounding the earlier ASIO bill and the numerous expressions of envy by the new Attorney-General about the powers possessed by French authorities to detain people without charge for up to three years, it is perhaps inevitable that there will be a high degree of public interest and comment on the amendment bill which is the subject of this motion.

However, on careful examination, we do not believe these amendments are of such significance as to warrant a full Senate committee inquiry, which could delay their implementation until some months into next year. They do not alter the maximum period of detention, they do not limit access to legal advice or otherwise change the strong safeguards insisted on in earlier debate. When a person is being questioned, they will still have their lawyer present, questioning will be supervised by a senior judge and it will be videotaped. Nothing in the amendments alters a person’s right to seek a remedy in court, so the person being questioned still retains important legal rights. But what will be curtailed is the ability of people to talk to anyone about what they were questioned about or to blab, as the case may be. Clearly that is sensible. ASIO and the police cannot operate to protect Australia if their investigations are in the media every day. The bill will close loopholes in ASIO’s existing questioning regime which, thanks to Labor’s insistence, gave ASIO robust powers balanced by strong safeguards.

To reiterate, we do not believe these amendments are of such significance as to warrant a full Senate committee inquiry, which could delay their implementation until some time in the new year, at least by a number of months. Given the nature of the amendments and the risk of delay, we do not support a reference of this bill to the Senate Legal and Constitutional Legislation Committee. As the Senate knows, this bill is mandated to be reviewed and there will be a detailed process of review in a little over two years. The Senate also knows that there were two extensive Senate committee inquiries
into the bill. We do not refer every bill to a Senate committee; it is a matter of judgment as to the nature and content of the particular bill. In this instance, we have exercised that judgment not to send it to a committee.

Senator GREIG (Western Australia) (4.32 p.m.)—We Democrats will support the motion moved by Senator Brown because, frankly, it makes sense. Scrutiny and investigation are what we all should be about here in the Senate. Like many senators, and probably members in the other place as well, I have received a large number of emails in recent days on this topic. I would like to take a moment to read the content of one of those typical emails into the Hansard and then address that. This, for example, is one I received today. It reads:

Dear Senator Greig,

... I am writing to express my strong opposition to the ASIO Legislation Amendment Bill 2003’s secrecy provisions.

These provisions, if passed, will generally mean that it will be illegal: to disclose information relating to ASIO’s conduct in detaining and questioning persons while a detention/questioning warrant is in force; and for two years after the expiry of such a warrant, to disclose information related to such a warrant which is ‘operational knowledge.’ This term is, however, defined to mean, in effect, all knowledge relating to ASIO’s activities. These offences are punishable by a maximum of five years imprisonment.

My opposition is based on the following grounds:

(1) These secrecy provisions will severely restrict the freedom of the press and the freedom of public discussion. If these provisions are passed, the following will be illegal. Journalists reporting on:

- the issue of a warrant soon after it was issued even if the warrant was issued illegally;
- while such a person is being detained, the conditions of detention even if such conditions might not apply with the Act;
- investigations conducted by ASIO following upon the execution of a warrant for two years after the expiry of such a warrant; and

a parliamentarian highlighting the conditions under which persons are presently detained under the Act.

The email goes on:

These examples make clear that the secrecy provisions will severely impair the freedom of the press and the freedom of public discussion.

(2) These provisions will mean that ASIO’s activities and the domestic ‘War on Terror’ cannot be subject to public discussion. These offences will mean that much of ASIO’s activities cannot be subject to open discussion. Given that ASIO is invariably involved in domestic anti-terrorism measures, these offences will have the knock-on effect of insulating the domestic ‘War on Terror’ from the public gaze. If these offences become law, one of the most significant policy issues for Australia will then be carved out from public debate. It is for this reason that these secrecy offences pose one of the gravest threats to Australia’s democracy since the launch of the ‘War on Terror’.

(3) the ‘operational knowledge’ offence is likely to be constitutionally invalid. It is questionable whether the ‘operational knowledge’ offence will survive constitutional scrutiny.

The High Court has stated that it will accept limitations on the freedom of political discussion only if these limitations are reasonably adapted to pursuing a legitimate objective.

It is clear that the ‘operational knowledge’ offence by restricting the communication of information relating to the activities of ASIO limits the freedom of political discussion. The remaining question is whether it is reasonably adapted to the aim of protecting the integrity of ASIO’s intelligence-gathering activities. There is a serious argument that the ‘operational knowledge’ offence by defining ‘operational knowledge’ so broadly and imposing a prohibition for two years will fail this test. In other words, its gross disproportional-ity will spell constitutional invalidity.

I would urge you on these grounds to oppose the secrecy provisions.

The constituent then goes on to advocate and support the notion that this ought to go to a Senate inquiry. I am the first to say that I
cannot be certain if all the issues raised by this constituent are valid, accurate, have been tested or can be challenged, but I am the first person to say they ought to be. If for no other reason, we should place ourselves in the situation where people in the community who quite reasonably—rightly or wrongly—have these concerns should be assuaged if they are wrong or we should be in a position of correcting things if they are right. I pursued this very matter today during question time with Minister Ellison representing the Attorney-General. As much as you can during questions without notice, I reminded the Senate and the minister that it was very much this time last year when there was intense political and emotional pressure on the Senate, and the opposition in particular, to pass the ASIO legislation with the veiled threat from the government that if anybody was harmed, injured or subject to terrorist activity over the break then it would be the opposition’s fault. It was an appalling situation, but the opposition, to its credit, stood up to that and said it would not be bullied into passing draconian legislation without thorough scrutiny. That was the right approach, and I do not see what has changed.

In answer to my question today, the minister said—unless I misunderstood him—that, despite the passage of the legislation, there has been no detention under the law. So why was there a rush this time last year? Could it be, as I suspect, that the government merely took the opportunity to press through laws in the last sitting week—indeed, on the last sitting day—not only to play wedge politics but also to get through laws it would not get through under normal circumstances? I have been advised by my staff that I have been offered a briefing on this legislation tomorrow by the Attorney-General’s office. That is fine, but we may well be in the situation where we are dealing with the legislation either tomorrow or on Thursday, the last day of the year, and I just do not think it is good enough that measures as critical as these and which go to the heart of civil rights and civil liberties should be pressed through under these circumstances.

We Democrats do not have a representative on the Joint Parliamentary Committee on ASIO, ASIS and DSD. There is no minor party representation on that committee, so we do not have the opportunity to be in the loop, as it were, and to be across those issues, up to speed on them and fully briefed on the issues of that review and scrutiny committee. The proposal that Senator Brown put up today is the best way to circumvent that, at least for us on the crossbench. Scrutiny is needed. There ought to be no panic, there ought to be no pressure, and we should be cool-headed in our response to such legislation.

I have two particular fears and concerns, on which I am open to persuasion. I would like to be allayed of my concerns and, if it stands that they are valid and legitimate concerns, they very much need wider and political community debate. I have two particular concerns with the legislation which I want to tease out. Firstly, the government is arguing that, in the first instance, the detention period for people from a non-English-speaking background—that is, for people who will require an interpreter—should be doubled, from 24 hours to 48 hours. I have a broad question in response to that. Show me, please, where this has been a problem, why it might be a problem and, if it is a problem, why it would require a doubling of the hours. My fear is that this is perhaps not the case; perhaps what we are really dealing with here is a backdoor way for the authorities to double the amount of time that people from non-English-speaking backgrounds can be detained. Dare I suggest that most of them would be people of Islamic background and probably Arabic. I would want to be as-
suaged of that concern, and so would the community.

My second strong concern is in relation to the penalties that apply to what we might call secondary or tertiary leaks or breaches of information relating to warrants or investigations under way. There may well be circumstances where that would be inadvertent and accidental and should not attract criminal penalties, which I understand it does. I fear for the freedom of the press, and perhaps even for the freedom of speech normally afforded to politicians on such matters, but if those fears are wrong then a committee process is the right place to evaporate those fears. If those concerns are correct, a committee process is the best opportunity to engage in public, community and parliamentary debates with the proper legal authorities, human rights lawyers and those with a strong interest and passion in this area to come up with better legislation that has the faith of the Australian community and is not just a bill that is rammed through on the numbers of the parliament. That is an unhealthy democratic process. Senator Brown’s proposal makes good sense and provides us with yet another opportunity for thorough Senate scrutiny on a contentious issue.

Senator NETTLE (New South Wales) (4.41 p.m.)—In rising to speak to Senator Brown’s motion, I concur with his comments about this being the first test for the new Leader of the Opposition. Having heard now from the Labor Party in the Senate that they intend to stand shoulder to shoulder with the Howard government by giving more powers to ASIO to take away further civil liberties from Australian citizens, it is a test that the opposition, under their new leader, have clearly failed.

This legislation is something that many of us in here would have predicted. We had the debate on the primary piece of ASIO legislation. It was the debate that others have talked about. It went to two full Senate inquiries, and the community was closely engaged in and closely concerned about that legislation. Once that legislation was passed and came into law, with the support of the opposition, it was unsurprising that as time went on the new Attorney-General said: ‘We did not give ASIO quite enough powers. We need to increase the powers that we already gave to ASIO, unprecedented powers.’ We have seen around the world in response to September 11 security agencies having been given greater powers. They were given those powers by the government and the opposition some time ago. Now more legislation is coming forward because ASIO were not given quite enough powers and should be given more powers.

Let us remember that the legislation that has already been passed in the parliament is unprecedented in that it detains people who are suspected of being involved in criminal activities. This is not about targeting people who are reasonably found to have committed a crime before a court of law. The legislation that has already been passed to detain these people for seven days.

I want to speak about the proposal in this legislation to double the interrogation time for people who come from a non-English-speaking background. There have been comments made in the media and from a variety of parties in the chamber here now that it is appropriate for us to detain people from a non-English-speaking background for twice the amount of time for interrogations. These comments miss the point of the detention. The reason for detaining someone for twice the period of time is not to give them
extra time to explain their situation. This is an interrogation carried out by ASIO about activities that they have been involved in. It is not a discussion with somebody about what they may or may not have been doing. It is an interrogation by security agents. To suggest that they are giving somebody twice as long to state their case or to put forward their situation is to miss the point behind the detention of people suspected of being involved in any criminal activity.

When the primary ASIO legislation was first introduced, many comments were made by various ethnic communities about the impact of the legislation on their communities. During the Senate references committee inquiry that looked at this legislation, the Chief Executive Officer of the Australian Federation of Islamic Councils said to the committee:

Muslim Australians fear that they will be the first victims of the new laws.

It appears that their predictions have come true and that the first people to have been targeted under this legislation have been Muslims living in Australia. These ideas were put forward at the time and it appears that their predictions have come true in how this legislation has been used to date. Comments were also made by the Islamic Council of Australia during the debate on the previous ASIO legislation. The council felt that the new laws would be used to discriminate against individuals from the Islamic community. They said:

The Islamic Council of Victoria, as a peak Islamic representative group, remains concerned that this piece of legislation is being introduced at a time when the Islamic community is being marginalised and being treated and labelled as ‘terrorist’. It is quite clear from the readings of the bill that the word ‘terrorism’ is a non-neutral term. And already there are those stereotypes that are in fact making the connection between terrorism and Islam. Yet, the government has not addressed those issues and have not approached the community or the Islamic community on the needs to address those issues.

These concerns were put to parliament before the previous round of ASIO legislation was debated. And some of these concerns have come true. These fears that they would be the first communities to have this legislation used against them have come true. I spent the weekend at a conference that a range of ethnic communities attended. We were talking about this legislation and about their predictions that the legislation will firstly be focused on them having come true. Voices in the community have been relating their concerns to senators, and we heard Senator Greig, the previous speaker, read out examples of emails he has received from constituents about their concerns with the legislation. The Greens proposal is to allow those concerns to be heard by the Senate and for these voices and their legitimate concerns to be raised and to be addressed as part of the public debate and the parliamentary debate on this legislation.

These issues have been raised by a raft of different people. Indeed, on 27 November, University of Sydney Associate Professor Don Rothwell raised another issue in relation to the doubling of ASIO’s interrogation time for people from non-English-speaking backgrounds. He said that doubling ASIO’s maximum questioning period for those whose first language is not English will breach article 26 of the International Covenant on Civil and Political Rights. Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Associate Professor Rothwell was quoted in the *Sydney Morning Herald* as saying:

It would seem to me that inserting a provision into Australian law, which would allow for someone who does not have English as a first language, to be subject to a maximum of 48 hours interrogation or questioning is a clear distinction or discrimination and would, therefore, be a clear breach of the convention.

These are opinions being put forward about this particular ASIO amendment. This amendment has passed through the House of Representatives and has been rubber-stamped by the Howard government. Now the government is proposing to bring it on for debate in the Senate tomorrow. We had comments from a range of different parties before the legislation had even been introduced into the House of Representatives, saying, ‘That’s fine. We’ll sign off on that legislation.’ We are now hearing genuine concerns from associate professors such as Don Rothwell, from the University of Sydney, saying that we may well be breaching international conventions to which we have signed on. By doubling their interrogation period, we may be discriminating against people who do not have English as their first language. Yet what we are hearing today from the opposition, with the new Leader of the Opposition leading the charge, is: ‘That’s okay. Let’s just let this legislation go through to the keeper. Let’s not see the Senate play the role of a house of review. Let’s not see the Senate provide the scrutiny or allow the public to voice their concerns around this legislation so that these issues can be examined.’ That is what we are hearing from the opposition today in the Senate.

There are also concerns that another part of the International Covenant on Civil and Political Rights may well be breached. Article 9.1 of the International Covenant on Civil and Political Rights states:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Questions need to be raised and need to be answered by the government. Does the doubling of the maximum amount of time that a person can be questioned and possibly detained under an ASIO warrant simply because an interpreter is present at any time while a person is questioned under an ASIO warrant make it more likely that that person’s detention is arbitrary under the International Covenant of Civil and Political Rights? This question needs to be answered by the government, and this is the reason the Greens propose that we should send this legislation to an inquiry.

To date the government has not made any clear statement that I am aware of about how these proposed amendments will impact on children whom it seeks to be able to detain under the ASIO legislation—children between the ages of 16 and 18 who need access to an interpreter. Should ASIO be able to question and interrogate those children for up to 48 hours? These are the questions that we need to ask, and the time for asking those questions is not in the committee stage of this debate tomorrow, where the government has already signed off on an agreement with the opposition to pass this legislation without addressing these concerns, without hearing the concerns from the community and without putting up their arguments as to why we should or should not proceed down this path of taking away further civil liberties.

There are many questions that still need to be asked—for instance, about increases in the maximum questioning time that will operate once an interpreter is present at any time whilst a person is being questioned under the warrant. Does the presence of an in-
interpreter facilitate or impede questioning? Should the bare fact that the interpreter has been present at some stage during the questioning process trigger a potential doubling of a person’s questioning time, irrespective of how long the interpreter has been present, whether questioning has been conducted through them or whether their presence has facilitated or impeded the questioning process? Will the amendments mean that people will be less likely to ask for an interpreter if they need one? Will the amendments mean that an interpreter will be provided more frequently, especially given the fact that the doubling of the maximum questioning time will be triggered if an interpreter is present at any time during the questioning under the warrant? And does the doubling of the maximum time of questioning when an interpreter has been used, if combined with the detention under the warrant, amount to punitive detention of the sort that requires judicial sanction under the Commonwealth Constitution? These are legitimate questions that need to be answered and on which we have not heard responses from the government.

Hopefully we will hear that during this debate, because the time to ask these sorts of questions is not when we are debating the legislation in the committee stage—when the government has already received agreement from the opposition to pass this legislation through. We need to be hearing these voices—and the concerns that the opposition voiced previously to say they did not want this legislation to be delayed. They have been caught in that trap before, as the Senator Greig explained previously. The opposition has allowed the government to target and pressure them over not passing legislation, trying to put onto their shoulders the concerns that they will be responsible for anything that should occur. Nothing did occur, and the legislation was not used until very recently. The opposition should not fall into that trap again: handing away civil liberties simply because they are scared, simply because they are not prepared to stand up and say that the civil liberties of Australians must be defended. We must not let the politics of fear, division and insecurity force us down a path where we hand away the civil liberties of Australian citizens. That is the challenge to the opposition, and today we have seen the opposition, under their new leader, Mr Latham, comprehensively fail that test.

The Greens are making the most reasonable of requests. Let the constitutional issues that have been raised—are we breaching international conventions, how are these issues going to be raised and how are they going to be addressed in the legislation?—be discussed in the Senate where the appropriate debate occurs, with public involvement and public consultation. Let us not just shut down the debate and say to the government, ‘Sure, no worries. Let’s pass your security legislation through.’ If you find out later down the track that perhaps you did not give ASIO quite the powers they wanted, bring on another piece of legislation after that from the new Attorney-General to say, ‘Let’s increase ASIO powers because we’re simply not getting what we want,’ with no justification provided as to why this needs to be increased. We did not hear in the answers from Minister Ellison during question time any reasons as to why we need to increase this legislation, yet we have seen the opposition just turn around and say, ‘No worries. Let your legislation through.’ This is not acceptable. We should be sending this to a Senate inquiry as the Greens are proposing in the Senate today.

Senator BROWN (Tasmania) (4.57 p.m.)—I thank Senator Nettle and, before her, Senator Greig for their important contributions, which have outlined the absolutely compelling case for this legislation to go
before a Senate committee and therefore before the people of Australia and their experts in this field. What an extraordinary thing it is that Labor has collapsed over this. It is not just shutting out Australian experts from feeding in information on this legislation, so that we are informed when the debate comes up, but a collapse on the debate itself.

Senator Ludwig, for Labor, says, ‘We don’t believe these amendments warrant an inquiry.’ That is a complete capitulation. Let me warn Labor that if it thinks that conceding this to Mr Ruddock and Mr Howard is, in some way, not going to lead to another erosion of Australians’ rights as soon as we get back here after summer, then Latham Labor land becomes la-la land. It is like the chicken hoping that, if it looks hypnotised, the snake will not bite it. Where is the gumption in Labor? It may be that Mr Latham was distracted today by his rise to the Labor leadership, and that is understandable, but there is a whole party there which is the wicket-keeper when it comes to legislation like this, and it collapsed. This vote today comes after there has been enormous concern from the community. The concern says, ‘Let’s at least have somebody with prudence take a look at this,’ and that includes the Labor Party.

They had to take this seriously. They had to know the significance of this. They have to know that if Mr Ruddock and Mr Howard have them on the run on this they are going to take it further in the run-up to the next election. Of course they are! Everybody knows that. That is the game plan here. That is why Mr Ruddock has moved from the post of Minister for Immigration and Multicultural and Indigenous Affairs to that of Attorney-General—because at the next election the focus, the political concoction, will change from vilifying asylum seekers to terrifying Australians, for political purposes, about terrorism.

We have a right to be concerned about terrorists. We have a right to know that we are prepared in terms of intelligence and response. We have that knowledge. Our intelligence agencies and policing agencies have enormous powers to deal with terrorists. But, as Senator Greig said, we found out through his question today that when this ASIO legislation came to be tested—when Mr Brigitte was in this country—it was not used. He was not brought in and interrogated. There was no need for an interpreter. It is spurious to say that these amendments to the legislation are required because in practice over the last 12 months the legislation has been found wanting. What a concoction that is. The reality is that since Mr Ruddock took over as Attorney-General—and you can read it in his second reading speech—he has been instructing the bureaucracy on how to amend the laws. The request is not coming from the opposite direction; it is not coming from ASIO. He is saying, ‘We want to amend these laws to cut away more civil liberties and corner the Labor Party.’

Senator Ian Campbell—He’s not saying that; that’s a misrepresentation.

Senator BROWN—The government had its opportunity to get up and speak on this, and it sat there and said nothing. We will wait for the debate tomorrow when they try to ram this through, supported by Labor, and it is left to the crossbenchers, the Greens and the Democrats, to equal this out—to defend Australia and the rights of Australians in these matters.

Senator Ian Campbell—We’re not trying to ram it through; we’re trying to have a debate and you’re trying to stop us.

Senator BROWN—The Manager of Government Business in the Senate says they want a debate on this. We are saying to the community of Australia, ‘We want you to be involved in this and we want the senators to
be informed.’ The government are saying: ‘None of that. We’ll cut the Australian community out and proceed to debate this matter, regardless of the good information that could come in, in studied ignorance.’ The extraordinary thing is that Labor are saying, ‘Yes, we’ll go for that too.’ It is a failure by the big parties. It is a Labor-Liberal nexus. It is a failure of their responsibility to the Australian people, to Australian laws and to the Australian democratic process.

It is a pretty poor impasse on what should be informed discourse in this parliament—on our responsibility to be informed when we move on extraordinarily important pieces of legislation like this. It sends a shudder down the spine of any real democrat that this process should be proceeding in this way—with caution thrown to the wind and the expertise that is out there in the Australian community on so important a matter blocked at the Senate door, with Labor supporting the government in that blocking process. This is very important legislation. I assure the Senate that we will be dividing on this matter and that, even at this late stage, Labor should rethink.

Question put:

That the motion (Senator Brown’s) be agreed to.

The Senate divided. [5.07 p.m.]

(The Acting Deputy President—Senator G.M. Marshall)

Ayes.......... 8
Noes.......... 36
Majority....... 28

AYES

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

NOES

Barnett, G.  Bishop, T.M.
Buckland, G.  Campbell, G.

Carr, K.J.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Cook, P.F.S.  Crossin, P.M.
Denman, K.J.  Evans, C.V.
Ferguson, A.B.  Forshaw, M.G.
Hogg, J.J.  Humphries, G.
Hutchins, S.P.  Johnston, D.
Kirk, L.  Lightfoot, P.R.
Ludwig, J.W.  Mackay, S.M.
Marshall, G.  Mason, B.J.
McGauran, J.J.J. *  McLucas, J.E.
Minchin, N.H.  O’Brien, K.W.K.
Ray, R.F.  Sherry, N.J.
Stephens, U.  Tchen, T.
Tierney, J.W.  Watson, J.O.W.
Webber, R.  Wong, P.

* denotes teller

Question negatived.

NOTICES

Presentation

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (5.12 p.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That paragraph (1) of standing order 115 be amended to read as follows:

115 (1) After the second reading, a bill shall be considered in a committee of the whole immediately, unless:

(a) the bill is referred to a standing or select committee; or

(b) no senator has:

(i) circulated in the Senate a proposed amendment or request for amendment of the bill, or

(ii) required in debate or by notification to the chair that the bill be considered in committee of the whole.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation)
by leave—I give notice that, on the next day of sitting, I shall move:

(1) That estimates hearings by legislation committees for the year 2004 be scheduled as follows:

2003-04 additional estimates:
Monday, 16 February and Tuesday, 17 February and, if required, Friday, 20 February (Group A)
Wednesday, 18 February and Thursday, 19 February and, if required, Friday, 20 February (Group B)

2004-05 Budget estimates:
Monday, 24 May to Thursday, 27 May and, if required, Friday, 28 May (Group A)
Monday, 31 May to Thursday, 3 June and, if required, Friday, 4 June (Group B)
Monday, 1 November and Tuesday, 2 November (supplementary hearings – Group A)
Wednesday, 3 November and Thursday, 4 November (supplementary hearings – Group B).

(2) That the committees consider the proposed expenditure in accordance with the allocation of departments to committees agreed to by the Senate.

(3) That committees meet in the following groups:

Group A:
Environment, Communications, Information Technology and the Arts
Finance and Public Administration
Legal and Constitutional
Rural and Regional Affairs and Transport

Group B:
Community Affairs
Economics
Employment, Workplace Relations and Education
Foreign Affairs, Defence and Trade.

(4) That the committees report to the Senate on the following dates:
Wednesday, 24 March 2004 in respect of the 2003-04 additional estimates, and
Thursday, 17 June 2004 in respect of the 2004-05 budget estimates.

COMMITTEES
Regional Affairs and Transport Legislation Committee

Report
Senator McGauran (Victoria) (5.13 p.m.)—On behalf of Senator Heffernan, I present the report of the Rural and Regional Affairs and Transport Legislation Committee on the draft Aviation Transport Security Regulations 2003, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator McGauran—I move:

That the Senate take note of the report.

Question agreed to.

BUSINESS

Rearrangement

Senator Vanstone (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (5.14 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 3 (Taxation Laws Amendment Bill No. 5 2003).

Question agreed to.
TAXATION LAWS AMENDMENT BILL
(No. 5) 2003

Second Reading

Debate resumed from 1 December, on motion by Senator Patterson:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (5.14 p.m.)—The Taxation Laws Amendment Bill (No. 5) 2003 contains eight schedules. The bill was passed by the House of Representatives on 26 November 2003, following its consideration by the Senate Economics Legislation Committee. The first three schedules of the bill deal with thin capitalisation; the other five deal with other foreign dividend accounts, the FBT exemption for public hospitals, reducing tax on eligible termination payments, the application of the same business test, and tax losses. While Labor supports the majority of this legislation, it will move to delete part 4 of schedule 1—the selective revaluation of assets—and also the schedule relating to tax on ETPs and the schedule relating to tax losses.

Part 4 of the schedule will relax the requirement for the revaluation of assets. The amendments contained in the schedule will make a number of changes to the thin capitalisation regime, which Labor broadly supports. Most importantly, amendments in the first schedule will extend the range of entities that qualify as securitisation vehicles and are, therefore, excluded from the thin capitalisation rules. It will allow specific financial entities to use the same gearing methodology as used by the banks.

Part 4 of the schedule will relax the requirement for the revaluation of assets. Under the current provisions, an entity may value assets for thin capitalisation purposes by means other than those reflected in its accounts; however, the value must be determined by an independent valuer in accordance with relevant accounting standards. Part 4 will allow a suitably qualified employee, who has no other conflict of interest, to do the revaluation, provided the methodology, assumptions, accuracy and reliability of the data and information used is verified by an independent valuer. In-house revaluations, with the revaluation process checked by an external independent expert, will provide companies with significant savings in compliance costs. Labor will support these provisions.

Part 4 will also allow an entity to revalue only one asset in a class instead of all assets in that class, provided no asset in the class has fallen in value. Allowing a company to be selective about which assets in a class it will choose to revalue does not provide an acceptable trade-off between reducing compliance costs and increasing compliance risks. Labor will move to delete the provision for selective revaluation of only some assets in a class.

Schedule 5 guarantees a fringe benefits tax exemption for public hospitals. Public hospitals currently access an FBT exemption due to their classification as public benevolent institutions. However, due to changes in the governance for public hospitals, there is a risk that they will no longer meet the requirements of a public benevolent institution. Schedule 5 also gives the same treatment for the remote area housing FBT exemption for public hospital employees. In order to ensure that public ambulance services will be given equal treatment, Labor intends to move amendments to extend these exemptions to state ambulance services. I understand the Australian Democrats have a similar amendment. I think the amendments being circulated confirm that Senator Murray and I will both be moving an amendment in this regard.
Schedule 6 will reduce the tax on excessive eligible termination payments. The excessive component of an ETP is that part of a payment that exceeds the taxpayer’s reasonable benefit limit for the purposes of superannuation. The current RBL for a lump sum is $562,192 and for a pension it is $1,124,384. These are reasonably generous restrictions placed on the upper limit of superannuation savings in this country. I use the words ‘reasonably generous’ because it would require a very high income to reach an RBL set at just over $560,000 and $1.1 million for a pension. There are very few Australians who would ever reach these RBLs. I should also say that they are indexed. The excessive component is currently taxed at the top marginal rate of 47 per cent, plus the Medicare levy. The government argues that the proposed 38 per cent rate and the contributions tax of 15 per cent are equivalent to the 47 per cent rate. However, the effective rate will differ according to the circumstances of individual taxpayers.

I cannot help being reminded of the recent debate on the government’s superannuation package. In a deal with the government, the Democrats approved one of two components of that package, which was an exclusive tax cut on superannuation contributions that only applied to high-income earners. I should also say that they are indexed. The excessive component is currently taxed at the top marginal rate of 47 per cent, plus the Medicare levy. The government argues that the proposed 38 per cent rate and the contributions tax of 15 per cent are equivalent to the 47 per cent rate. However, the effective rate will differ according to the circumstances of individual taxpayers.

Senator McGauran interjecting—

Senator SHERRY—You will be a beneficiary, Senator McGauran, when you get your next superannuation statement. It was an exclusive tax cut on superannuation contributions that only applied to high-income earners.

Senator McGauran—What about the co-payments? Why weren’t they tabled?

Senator SHERRY—Senator McGauran, I do not think that is a detail that you would want to get up and debate. If you want to I am happy to, but I do not think it is an area you would want to go to.

So this measure we are debating today does remind me of this government’s approach to taxation of superannuation—delivering benefits to high-income earners. Labor has put forward an alternative position: that there should be a modest tax reduction for low- and middle-income Australians with an income up to $95,000. It just seems to me to be an extraordinary priority of this government.

Senator McGauran—Income tax?

Senator SHERRY—We are talking here about tax on superannuation, Senator McGauran. Senator McGauran seems to have a renewed interest in superannuation and tax. I would be very happy to hear what the National Party approach is to taxation of superannuation. It was Senator Boswell, your leader in the Senate, who participated in this debate some weeks ago and accused us of being antiworker. It so happened that I had been to a meeting of shearers in Tasmania the week before to talk about superannuation. In a very balanced overview of Labor policy versus Liberal policy, I did point out to the shearers that the Liberal government was proposing an exclusive tax cut for those Australians earning more than $95,000. I have to say that the shearers were none too impressed. They were certainly none too impressed when I informed them that the policy approach of the Liberal government was to make them work till they drop. The Liberal solution to ageing Australia is to force workers to work longer and longer. The shearers were none too impressed by that either, Senator McGauran. It is not a particularly inspirational policy approach to require Australians to work till they drop, which is your current approach.
Schedule 6 will also reduce the superannuation surcharge on taxpayers receiving an ETP with an excessive amount. The reduction in the surcharge and contributions will prevent the surcharge applying in addition to the tax on the excessive component of an ETP for the year in which the ETP is paid. This measure has a current estimated cost of $5 million a year. Consistent with Labor’s opposition to the exclusive tax cut for high-income earners—those earning more than $95,000—on superannuation which was passed by the Senate some weeks ago, Labor will oppose this measure. Labor’s policy is not to support exclusive tax cuts for high-income earners on their superannuation but to reduce the contributions tax on superannuation for all taxpayers.

Schedule 7 deals with the application of the same business test. The first part of schedule 7 deals with tax losses. Companies are allowed to deduct a prior year loss if they pass the continuity of ownership test. To pass the continuity of ownership test, more than 50 per cent of the ownership of the company must be maintained from the beginning to the end of the year in which the deduction is claimed. If the company does not pass this test, it can still claim the deduction if it passes the same business test. To pass the same business test, a company must carry on the same business both immediately before the disqualifying change of ownership and during the year it claims the deductions. Labor will support part 1. The second part of schedule 7 deals with bad debts. When seeking to reduce bad debts, the current law provides for a first continuity period and a second continuity period for applying the COT. If the debt was incurred prior to the current year, the first continuity period commences on the day the debt was incurred and finishes at the end of the income year and the second continuity period is the current income year. Labor will support schedule 7.

Schedule 8 deals with tax losses. Corporate entities are not able to choose the amount of prior year tax losses which they wish to deduct. As a result, any tax losses must be applied against any income in excess of allowable deductions. Previously, corporate groups would structure to receive distributions from outside the group into a holding company, with subsidiaries holding any losses. Under the previous loss transfer provisions, the holding company could choose not to absorb group losses against distributions from outside the group. The requirement to pool group losses under consolidation removed that option. A tax system redesigned recommended that entities be able to choose the proportion of prior year losses to be deducted. The review of business taxation also recommended allowing companies to choose the amount of tax losses to deduct. The existing law results in tax losses being wasted.

Schedule 8 would provide a specific rule applying to corporate tax entities to complement the general rules applying to all taxpayers on how to deduct prior year losses. The new rule would operate in a similar manner to the general rule by offsetting the prior year tax losses against net exempt income. Schedule 8 would provide that any unused franking tax offsets would be converted into an equivalent amount of tax losses and be able to be carried forward for deduction in a later year of income. The former Leader of the Opposition, Mr Crean, announced in his budget reply that Labor would not proceed with this measure as an offset to the cost of Labor’s Medicare package. In opposing this measure, Labor are not suggesting that it is bad policy or poorly designed, but we have a greater priority in terms of the use of revenue and that is to help rebuild Australia’s health system, which has been wrecked under this government. I conclude my remarks there. I look forward to
the committee stage, where the Labor Party have four amendments. In view of the time of year, I will be reasonably brief in my comment and look forward to further debate on the bill.

Senator MURRAY (Western Australia) (5.27 p.m.)—The Taxation Laws Amendment Bill (No. 5) 2003 is another 88 pages of tax legislation with over 100 pages of explanatory memorandum. The bill contains five distinct chapters. The first chapter deals with thin capitalisation. This is one of a series of bills that over a number of years have dealt with this area. Thin capitalisation is an effective antiavoidance provision to stop multinationals funding their Australian subsidiaries with debt and claiming the interest as a tax deduction. It is a principle that applies not just to multinationals but to all Australian based companies which use that technique.

Over the past decade, the thin capitalisation rules have been significantly tightened and they now apply to both outbound and inbound investment. These changes continue the approach to tighten the thin cap rules. They also involve clarification of some of the contentious issues and specifically, in the case of securitisation vehicles, have involved extensive industry and Taxation Office consultation. The Labor Party have introduced an amendment seeking to have all assets of a class revalued if one asset is revalued. The Democrats believe that this is an overkill amendment. The rules require that any revaluation for thin cap purposes must be conducted by an independent expert. There is also a requirement that there has been no fall in the total of the relevant classes of assets. Current accounting standards require companies to value their assets at the lower of net realisable value or cost. Any revaluation must follow the strict accounting standards. We believe this provides adequate protection for any avoidance opportunities, providing an independent expert is truly independent and has the relevant expertise. We do not believe that Australian corporations should revalue every asset to ensure that they comply with the thin cap rules when they address one asset.

I want to briefly refer to the independence issue. During the Senate Economics Legislation Committee inquiry which examined this bill in July I explored the issue of independence. I noted that I did not find the word ‘independence’ in the text of the amendments, although it might have been in the original law. So I asked for some further work to be done on the matter. Amongst other feedback I got was a letter from the Institute of Chartered Accountants in Australia, which clearly understood why I was raising the issue of independence. There is a long history in this country, of which I took particular note from the eighties and onwards, of valuers who are very much not independent. They, along with certain auditors, contributed enormously to the collapse of major companies at that time because they were complicit in the creative accounting and the excessive valuation of assets, which resulted in the falsifying of company accounts.

To this day, we find scandals in the mortgage broker industry, particularly in my home state of Western Australia. False valuations are at the heart of the scams and rorts that defraud individuals who have invested their money in assets. Of course we all know that many valuers—probably most valuers—have high ethics and behave in the manner that their profession requires. Nevertheless, we cannot take for granted that, when legislation refers to ‘independence’ in these matters, independence automatically follows. However, having tested the proposition, the committee remarked upon it in their report under the heading of ‘Revaluation of Assets’. As I said earlier, the Institute of Chartered Accountants wrote to me. Having examined
the issue and taken note of my concern, it said:

Based on the above, the ICAA is of the opinion that in relation to both legislation regulating the use of valuations for the purposes of the thin capitalisation provisions and the ATO’s existing and proposed processes to deal with the verification of valuations, there are sufficient safeguards in place to ensure the independence of external valuers for the purposes of section 820-680(2B) of the Taxation Laws Amendment Bill (No. 5) 2003.

I have respect for the views and the thoughtfulness of the Institute of Chartered Accountants in Australia, but it must be noted that it did refer to the ATO’s proposed processes. I would hope that government, Treasury and the Australian Taxation Office would be aware that the area of valuation, like the area of audit—which is currently under review by the government with respect to CLERP 9 with regard to independence—needs just as much attention to integrity and proper governance.

The fringe benefits tax element of chapter 2 of the bill provides a $17,000 fringe benefits tax exemption for employees of public hospitals. The rationale for this change is that currently public hospitals must be a public benevolent institution to qualify for the exemption. Any change to their governance structure may put their PBI status in doubt. Accordingly, this amendment will maintain their ability to provide fringe benefits to their employees. The Democrats support public hospitals and their ability to provide limited fringe benefits as a means of ensuring a total and fair salary package.

We are concerned by some media reports, indicating that many doctors have been claiming the exemption from multiple public hospitals. In other words, they are not double-dipping but multiple-dipping. For example, a doctor who worked for 10 public hospitals could claim a FBT-exempt $17,000 from each hospital. Potential earnings could therefore be $170,000 tax-free. They were anecdotal remarks made to us, but it would obviously concern the government and the tax office if that were to be a practice. Technically, it is possible that the legislation as presently structured would allow it but our belief is that that should fall within the part 4A antiavoidance provisions. We suggest to the Minister for Revenue and Assistant Treasurer that, if such reports are reaching her ears as well, it might be well to ask the tax office to ensure that doctors are not rorting the fringe benefits provision on that basis. The exemption that was provided was not provided to allow wealthy doctors and specialists to avoid tax. We suggest that if, in looking at this matter, the government were to establish that part 4A or any other antiavoidance provisions which do not sufficiently cover the matter, at some future date the government should at least consider limiting the exemption to a maximum of $17,000 per taxpayer which, on my understanding of the legislation, it does not do at present.

The Democrats and the Labor Party have jointly introduced an amendment to provide the public ambulance services with a similar exemption. We believe that the ambulance services are the front door of the health system and provide much valuable community assistance. In my state they are operated by the St John’s Ambulance Association. They are not a rich organisation and we think this sort of common rule exemption would indeed assist the provision of those services. The public ambulance services face the same problems in complying with the PBI rules as do public hospitals. In a way, ambulance services compete for the same staff as the public hospitals, and we urge the government to seriously consider accepting this amendment.

The third chapter reduces the tax on the excessive component of eligible termination
The bill ensures that the maximum rate of tax payable, including contributions taxes, is 48½ per cent; in contrast to the accumulated 56 per cent that is currently payable. This amendment has been costed by the government at around $5 million a year. It is an issue of equity and consistency, and on that basis the Democrats will be supporting this measure. We supported a similar bill in 2001, which had the same principle and dealt with the excessive components of golden handshakes—in fact, on 8 August 2001 the Senate passed that bill, which was the Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Bill 2001. We were joined in our support for that bill by the Labor Party, so we are not quite sure why, on the same principle, they are opposing this proposal from the government now.

Senator Sherry—New circumstances.

Senator MURRAY—Senator Sherry says ‘new circumstances’. I look forward to hearing him outline those during the committee stage. Chapter 4 provides a minor technical amendment for companies that fail the continuity of ownership test for losses. The bill allows them to determine the date of failure so that they can appropriately determine if they satisfy the ‘same business’ test. The Democrats will support that chapter.

The final chapter of the bill covers tax losses. It seeks to resolve the technical problem that has always existed in the tax laws, namely that franked dividends absorb tax losses. I think we can reasonably describe this as a double jeopardy situation, which the government is now seeking to correct. It is a technical problem because franked dividends are designed to be effectively tax free—the underlying profits have already been taxed. Unfortunately, a corporate taxpayer with losses will not obtain the benefit of a franked dividend which has come from a situation where the underlying profits have already been taxed, and will have their losses reduced by the amount of the franked dividend, which in fact imposes a double penalty. This problem has been made worse by the ‘gross-up and credit approach’ to the treatment of franked dividends and the introduction of the consolidation regime, which the parties subject to this debate have all supported. We will support this chapter. It is an integral part of the consolidation regime and is consistent with it. It was a recommendation of the Ralph Review of Business Taxation. Failure to pass this measure would, we think, preserve an existing inequity and would represent a disincentive for companies to enter the consolidation regime.

The Australian Labor Party have introduced an amendment to delete this chapter. I understand from the speech of Mr Cox in the House that this is not a question of principle but simply a question of priority for the revenue. Just like their opposition to the tax treaties with the United Kingdom and Mexico last week, I fear that the Labor Party know they can oppose legislation on the basis that we will support it. They know that we will be responsible, so they can indulge themselves.

Senator Sherry—That’s not in the spirit of Christmas!

Senator MURRAY—But, since it is Christmas, I don’t mind you indulging yourself, Senator Sherry! I, and the rest of the Democrats of course, share the concerns of the Labor Party about the funding of Medicare and bulk-billing, but this is not the route to go. We, particularly my colleague Senator Allison, have been working constructively with the government to improve health funding and to try to produce an outcome that the Australian public deserves. We have not yet had a meeting of minds, but at least we have
been advancing the amount of money on the table and the better methods by which Medicare’s needs could be dealt with.

In concluding, I want to take my first opportunity to congratulate Mr Latham on taking over the leadership of the Labor Party. I look forward to his constructive leadership of economic, finance and tax policy. I do hope he does not adopt the ‘small target’ strategy. Life will be far more exciting if we do not have small targets and we can have loud and big debates. Unfortunately, there is no time yet for the new leader to adjust his position on tax policies, so I think we will see the Labor Party stick with their determination to oppose an integrity measure for a notional saving.

Senator Sherry interjecting—

Senator MURRAY—When we come to it, Senator Sherry, we look forward to you reversing your position on capital gains tax concessions, which benefit the wealthy to the extent of about $1.8 billion a year. We look forward to you joining us to reform negative gearing and building depreciation allowances along the lines the Reserve Bank has supported—as you know, we have been on that treadmill for four or five years now. That would save us another $1 billion a year and help cool the housing boom, and perhaps the interest rate rises. We also hope you will help us reform the tax treatment of company cars, as the Ralph business review proposed. Then of course there is always the trusts issue that we could join with you on. So there are many issues on which the Democrats would join with the Labor Party in opposing the government’s policy, but in this instance we will be supporting the government’s policy because we think this bill in fact achieves issues of tax integrity and tax consistency which are helpful to competitiveness and tax administration.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.44 p.m.)—I thank my colleagues for their contributions. The Taxation Laws Amendment Bill (No. 5) 2003 makes amendments to income tax law and other laws to give effect to several taxation measures. I wish to briefly sum up what this bill is about and to make a few comments, if time permits, about some of the foreshadowed amendments. I will take the opportunity, if I do not have an opportunity to do so in my summing-up remarks, to speak to the amendments at a more appropriate time.

Firstly, the bill implements 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. As Senator Murray said—and I do not think anyone could seriously doubt—these are very important integrity measures in our tax system. 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 amendments will ease the compliance burden on business while maintaining the integrity of the tax law. The opposition amendments to this part of the bill would impose additional compliance costs on business and, principally for that reason, I can foreshadow that the government will not be supporting the amendments. I, together with Senator Murray, call on the Labor Party—perhaps even the new-look Labor Party—to rethink their approach to their opposition to this very sensible measure.

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 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. Once again, it is a sensible extension. The opposition will seek to extend this concession, but the government will not support any such amendments. The bill also provides that, for the purpose 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 per cent to 38 per cent 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 superannuation fund in the year that the excessive lump sum payment is paid. The opposition has also foreshadowed that they will oppose this aspect of the bill and, in that regard, it appears that this is indeed a backflip. In fact, Senator Sherry spoke in favour of a similar bill in 2001 that ensured that employees would not pay more than the top marginal tax rate plus the Medicare levy when receiving an excessive ETP directly from the employer.

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. Lastly, the 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 tax losses are not used up against franked dividend income, which is already effectively tax free by way of the franking tax offset. This measure will ensure that a corporate group is not disadvantaged by the move to the consolidation regime. I note that the Labor Party will oppose this measure as well. This is in spite of the support it gave to the crucial establishment of the consolidation regime, so it makes absolutely no sense. There is no logic to now opposing this measure.

One really wonders where the Labor Party is going on tax policy. Together with Senator Murray, we on the government side can only hope that, with a new leader who professes his support for tax reform across the board—for tax cuts for the rich as well as for the poor and for those down the income scale—we will get a bit of freeing up in the thinking that seems to have pervaded the Labor Party and particularly the attitude of Senator Sherry, who thinks that this government is interested in providing tax cuts for the rich. What we try to do, of course, is provide coherent responses when they are required in income levels where people may not necessarily be regarded as rich but are perhaps relatively well-off and where there is a good policy reason for wanting to make the proposals that we have put up and the laws we wish to introduce. This bill and the measures in this bill are a sensible set of provisions. Although they are disparate provisions, all of them are necessary. All of them are well thought through. All of them provide, in my view, appropriate policy responses to identified problems.

I do want to make a few comments in response to Senator Murray’s reference to fringe benefits that anecdotally, at least, certain doctors have availed themselves of and a reference to multiple dipping on fringe benefit provisions. I just want to put on record the fact that, prior to the new tax system, certain
public and non-profit hospitals were exempt from fringe benefits tax altogether. The exemption recognised the special position of public and non-profit hospitals and provided them with an employment cost saving. However, the fact that the fringe benefits tax concession was open-ended meant that there was scope for the concession to be exploited under salary sacrifice arrangements, and that was the basis for the government introducing the FBT capping measure as part of the new tax system. The cap is designed to close off the scope for overuse, as it should, whilst ensuring that public and non-profit hospitals are still able to retain an FBT concession and an employment cost advantage over other employers.

The cap applying to certain public and non-profit hospitals is $17,000 of grossed-up taxable value per employee. The FBT cap applies to each employer rather than to each employee, as the measure is aimed at improving the competitiveness of these employers and their ability to attract skilled workers. Applying the cap to individual employees would undermine this objective and introduce added complexity for those employers we are trying to assist. Nevertheless, as with all matters relating to compliance and the revenue, the government is interested if there are any taxpayers taking unfair or inappropriate advantage of any of the laws. So far I have only received anecdotal reports, which Senator Murray has alluded to. Since they were raised, I thought it was worth while in the context of this debate to at least put on the record the government’s response to the previous open-ended treatment and to refer to the policy rationale for the capping measure. Obviously some amendments will come forward in this debate. I propose to close my summing-up now and to deal specifically with the measures when those amendments are moved.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SHERRY (Tasmania) (5.53 p.m.)—I move opposition amendment (1) on sheet 3239:

(1) Schedule 1, item 14, page 15 (lines 11 to 16), omit subsection (2C).

As I touched on in my speech during the second reading debate, Labor’s amendment removes the provisions that would allow an entity to revalue only one asset in a class instead of all assets in that class, provided no asset in that class has fallen in value. Labor is concerned that the provision as currently worded will allow entities to cherry-pick assets that they wish to revalue—in other words, to pick out the valuation that suits them best at a particular time—for calculating the maximum allowable debt amount for thin capitalisation purposes. There would be no audit trail to allow the ATO to determine whether or not other assets had fallen in value. Labor does not wish to support this measure, as it would encourage entities to depart from normal accounting standards that require all assets in a class to be revalued. Labor considers that allowing a company to be selective about which assets in a class it will choose to revalue does not provide an acceptable trade-off between reducing compliance costs and increasing compliance risks. Those are my brief comments in support of Labor’s amendment.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.55 p.m.)—The government does not support this amendment. The subsection that the opposition proposes to omit is a fundamental part of meeting concerns about how assets can be revalued under the thin cap rules. Subsection 2C would allow one or more assets of a class to be revalued without having to revalue all the assets in that class.
Without subsection 2C the accounting standards would require the whole class of assets to be revalued. This would impose both a heavy and an unnecessary compliance burden on taxpayers. The measure was developed in consultation with the industry. In the design of tax law, I believe it is very important to consult with industry so that you might get a workable law in the end.

The proposed amendment is a fundamental change to the intention of the thin capitalisation rules, and it would perpetuate a problem for taxpayers when they revalue assets for thin capitalisation purposes. Under the amendment, taxpayers would have to either incur the costs of revaluing all assets in a class of assets to meet the thin cap rules or suffer the costs from the disallowance of debt deductions. We think that is an unreasonable burden. The measure is very important to the ongoing need to provide a policy response on capitalisation rules.

Question negatived.

Senator SHERRY (Tasmania) (5.57 p.m.)—I move opposition amendment (1) on sheet 3238, which I happily note is cosponsored by the Australian Democrats:

(1) Schedule 5, page 54 (after line 18), after item 4, insert:

4A After subparagraph 57A(2)(b)(iii)
Insert:

or (iv) a public ambulance service

This amendment relates to ambulance services that are provided for by public hospitals. Unfortunately, schedule 5 would remove the requirement that public hospitals must be public benevolent institutions, or PBIs, to access fringe benefits tax exemptions. This is in response to changes in the governance structure of many public hospitals which have resulted in them no longer meeting the definition and requirements of a PBI. Public ambulance services are in a similar position to public hospitals, in that they also face the risk of losing their PBI status. A recent court case between the Ambulance Service of New South Wales and the ATO resulted in the New South Wales service losing its PBI status because of the degree of government control over its activities. It is expected that this decision will affect the PBI status and associated FBT exemptions for ambulance services in Victoria, Tasmania, South Australia and Queensland.

Labor is moving this amendment— with, I am pleased to say, the support of the Australian Democrats—to provide public ambulance services with the same fringe benefits tax exemption provided to public hospitals in the bill. This amendment will ensure that public ambulance services can continue to compete for staff on a level playing field with public hospitals. To Labor there does not appear to be a significant policy rationale for treating ambulance services differently from public hospitals. Why treat organisations that take people to hospitals differently from the hospitals themselves, particularly as the staff who work in or in connection with ambulance services have to have at least some of the qualifications that are required inside a hospital?

Senator Murray—And provide care.

Senator SHERRY—Exactly. They often provide emergency care that is critical to the life of the patient, or at least to keeping them alive till they get to the hospital. It seems to us that the government’s approach lacks a policy rationale; I think it is mean spirited and a bit tricky. Labor have moved the amendment, and, as I said, we are pleased to have the support of the Democrats. I think the Senate will pass this amendment, and I hope the government will consider its attitude before the bill is returned from the other place before we complete our deliberations for the Christmas break later this week.
Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.00 p.m.)—The government does not think it is appropriate to consider the fringe benefits tax treatment of bodies other than public hospitals as part of this measure. The tax concessions available to ambulance services will not be affected by the Taxation Laws Amendment Bill (No. 5) 2003 or the draft charities bill, which has been the subject of extensive public consultation. This bill maintains the distinction between public hospitals and other bodies which existed under the previous rebates. Some ambulance services have been able to access a $30,000-capped fringe benefits tax exemption by virtue of their being a public benevolent institution. This status is now conferred on the basis of meeting tests established by the common law. There are several legal decisions that outline the factors required to meet the tests. The government is not proposing to change any of the conditions that an entity must meet to access this concession.

Over time, however, organisations do change their roles and governance arrangements. As a result, they may be considered to be government bodies. The position in the common law is that government controlled bodies are not public benevolent institutions. To avoid such a result, it is open to state and territory governments to arrange the operation of such services so they remain public benevolent institutions and eligible for the fringe benefits tax concessions on offer. With this fact in mind, and in light of the fact that the $17,000-capped fringe benefits tax exemption has been limited to public hospitals in this measure, the government will not support this amendment.

Question agreed to.

Senator SHERRY (Tasmania) (6.02 p.m.)—We oppose schedule 6 in the following terms:

(2) Schedule 6, page 56 (line 2) to page 63 (line 9), TO BE OPPOSED.

As I mentioned in my speech in the second reading debate, this effectively relates to the cap on superannuation benefits—what is known as the retirement benefit limit, or RBL, in industry jargon. The current RBL for a lump sum is $562,192 and for a pension is $1.124 million. These are the caps on money that can be accrued in superannuation at a tax concessional rate. These two figures are indexed; they obviously do increase. As I pointed out in my speech, a person would need to be on a significantly high income to be affected by this change. Certainly, a person on an income higher than $100,000 or $150,000 over most of their working life would be advantaged by this measure. I outlined to some extent in my speech during the second reading debate—and Senator Coonan touched on this—a similar measure, not the same measure, which the Labor Party supported a couple of years ago. But circumstances now are very different from those a couple of years ago. I remind the chamber, and all those listening to this debate about RBL limits in Australia on the broadcast, that the government’s tax policy is clear. We know as a matter of fact that this is the highest taxing government in Australian history. That has been clearly established. This government argues that the GST should not be included, but it is a federal government tax. It is the highest taxing government in Australian history.

The government has proposed two tax cuts since it has been re-elected. One was the infamous sandwich and milkshake tax cut in the last budget—$4 or $5 on average a week—and the second, which has also passed the Senate, relates to superannuation and was an exclusive tax cut for high-income earners on their superannuation contributions. That has passed. The Democrats and the government did a deal, and that is now
law. That was the second policy of the Liberal Party. The Liberals talk a lot about cutting taxes, but we know that this tax cut, which is only the second passed so far, is exclusive to high-income earners. I do not use the term ‘rich’, I use the term ‘high-income earners’, and here we have another tax cut exclusively for high-income earners relating to superannuation.

It is the view of the Labor Party that these exclusive tax cuts on superannuation for high-income earners are unfair. At a recent superannuation conference a couple of people in the audience got up—I knew many of them quite well—and took me to task for the Labor Party opposing exclusive tax cuts for high-income earners. I would assume that most of the audience were earning more than $96,000 a year. That would be my general assumption, and I think it would be accurate. I had to point out to them that, back in my home state of Tasmania, I do not get too many people dashing up to me and saying, ‘Cut the tax on superannuation for those earning more than $96,000 a year.’ I do get quite a few comments about the tax on super from people earning less than $96,000 a year.

In light of what I have outlined, Labor thinks that the government’s approach—and it has become a consistent pattern now—of delivering exclusive tax cuts for superannuation to high-income earners only is very unfair. There is no doubt that there should be tax relief on superannuation generally, but delivering it only to high-income earners is unfair and is not the Labor way. I make that very clear, and I make no apologies for it. Labor has put forward an alternative: a modest tax cut for all Australians who pay contributions tax on their superannuation. Middle-income Australians have not got one cent of tax relief on their superannuation from this government, yet here we have a second exclusive tax cut in the space of two weeks for high-income earners on their superannuation. That is the sum total to date of the Liberal government’s tax policy. We have heard a lot about what they may or may not do, but that is the sum total of what they have delivered. That is not the Labor way.

In those circumstances, and in particular after the deal that passed the Senate a couple of weeks ago, Labor has had to look at these sorts of measures and make a call, make a clear stand, and our clear stand is no more exclusive tax cuts on superannuation for high-income earners; it is just unfair. I would plead with the Australian Democrats: I know you did that deal a couple of weeks ago, and there were other elements to that deal, but we have the opportunity to remove what is a very unfair approach. During that debate a couple of weeks ago I got quite a few outraged calls from middle-income earners, who asked where the tax cut was on their superannuation. I had to refer them on to the Australian Democrats—to Senator Cherry, in this case, not to Senator Murray. It is so starkly unfair that we have a Liberal government—sadly, again in cooperation with the Democrats—willing to countenance this sort of approach.

I hope that the schedule is knocked out of the bill. It would be unfortunate if it remained. I make this last appeal to the Australian Democrats to reconsider their position. I know there is no sense appealing to Senator Coonan. I know that in the Liberal Party branches, where all these high-income earners are gathered, they have been groaning for years about reducing tax on super for high-income earners. That is what you would expect from the Liberal Party—a tax reduction on super for high-income earners—but the Labor Party will not agree to it. The Liberal Party is apparently happy to agree to this sort of tax largesse for high-income earners. That is a very poor approach to tax policy, and it is a good indication of how, over time, these concessions on super to high-income earners
alone are effectively being paid by low- and middle-income Australians. It is a very regrettable approach and it is very unfair. Labor will not have a bar of it.

Senator MURRAY (Western Australia) (6.11 p.m.)—It was inevitable that I would have to rise to respond to some of Senator Sherry’s remarks, and I will pick on a few of those as I go along. The first remark is an element of agreement, and that is that a position we have taken consistently is that the goods and services tax is imposed by the Commonwealth and, as the Auditor-General has outlined, should be accounted for in the books of the government and not moved off the balance sheet, as it effectively has been. The Auditor-General is very clear on that. We are supporters of the goods and services tax, but the issue of accounting integrity is one on which we have a common view with Labor and the Auditor-General.

The next issue comes to matters of principle. The Democrats are of the view that the amount of tax we raise in this country is insufficient for the legitimate expectations of Australians. However, we believe the amount can be raised by broadening the base—in other words, by increasing revenue. In our view you do not have to increase taxes; you have to reduce tax concessions and attack waste and mismanagement where it exists. But the principal target needs to be tax concessions, which the tax expenditure statement indicates is around $30 billion all told. It is the view of the Democrats that anywhere up to $7 billion to $10 billion of that can be pared away, including all those concessions to the well off—high-income corporate welfare for the wealthy; all those things agreed to by the Labor Party.

The coalition were up front, right in your face, with policy and said, ‘This is what we want to do.’ They were perfectly honest in their approach. Labor said: ‘We actually support the poor but, by the way, we’re going to give a nearly $3 billion tax concession for private health insurance, which isn’t means tested. Oh, by the way, we’re going to pass the schools bill and make sure we give $60 million to $100 million to the very wealthy schools in this country and afterwards we’ll complain about it. Oh, by the way, we’ll give capital gains tax cuts that amount to well over $1.8 billion, which is welfare for the rich,’ and so on. We say that none of those should have applied. If you pared those back, you would have all the money you needed without having to raise taxes for vital education and health needs. And there are many other needs that can be met from similar measures.

Our approach is quite simple really. We say that Australian tax law must be fair for everyone and that it must be consistent for everyone. If the top tax rate is going to be 47 per cent tax plus 1½ per cent, that is what the top tax rate should be. It does not matter whether you are well off or not so well off, that is where the top tax rate should be. What we strongly object to, of course, is tax minimisation and avoidance, which is generated by an ability to manipulate the tax provisions or through the provision of tax concessions that are not justified. We feel very strongly about the fact that the tax threshold is far too low. It commences at $6,000 in income earnings. We feel very strongly about the fact that effective tax rates for poor people can be as high as 80 per cent or more, simply because, if they move on to better earnings, the reduction in welfare benefits, coupled with a 17 per cent tax rate at that level of earnings, produces an exceptionally high effective tax rate.

So, in answer to Senator Sherry’s remarks, we suggest that it is not the top tax rate on which you should focus your attention but in fact the real tax rate, the average tax rate, which for the well off, the wealthy and high-
income earners is reduced because of what we would refer to as welfare for the wealthy, and all those items I outlined on which the Labor Party in its wisdom has supported the coalition. One would expect the coalition to pursue those policies—that is their rationale, that is their belief, that is their ideology—but the Labor Party seems to act in contradiction to its belief and its ideology by constantly saying one thing and doing another on the tax front.

Let us come to the specific area of superannuation, on which I would acknowledge Senator Sherry as probably one of the foremost experts in the parliament, along with our own Senator Cherry. I am not sure if I should put you there, Senator Coonan. I know you are expert in a number of areas, but I do not know if that is your particular area of expertise. Specifically, what we did on superannuation was to agree with the government an outcome that delivered some of what the government wanted in return for some of what we wanted, which was to really push hard for low-income people to have greater access to savings provisions. If Senator Sherry, who understands this policy field very well, were to take off his politics hat and put on his policy hat, he would understand very clearly what we were trying to achieve: it was not to deliver a big tax cut to the wealthy.

Coming back to this amendment, the question is: what is it about? It is about making sure that there is not a wealth tax. Effectively, what operates at present is a wealth tax. Personally—and with this remark I am speaking entirely personally and not for the Democrats—I can see circumstances where a wealth tax is perfectly reasonable. For instance, I consider a capital gains tax to be a wealth tax in one respect. I consider property taxes in certain respects to be wealth taxes. There are wealth taxes that are worthy. But, if you are going to specifically identify a tax rate for people who are wealthy, you have to pick a threshold and you have to apply it to all people, not just selectively to those who happen to have ETPs. You cannot punish people selectively in a tax system; you have to have a common, consistent and uniform standard. We think this is a matter of fairness. Of course we would like to put the bite on some extremely wealthy people, but you just cannot do that in a tax system. You have to be even-handed. It is a bit like justice: it has to be even-handed.

The other consideration we would always have to take into account is the financial impact. It is $5 million a year. It is really not a big deal and it is not going to do much to make wealthy people any wealthier. It is just a fairness issue. With that broad and sweeping range of responses to Senator Sherry’s remarks, I again indicate that the Democrats will oppose the Labor amendment.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.19 p.m.)—The overall tax rate applying to excessive lump sums from superannuation funds is around 56 per cent. I think we need to be clear tonight on what we are really talking about: the overall tax rate applying to excessive lump sums from superannuation funds is around 56 per cent. This reflects the application of contributions tax, the Medicare levy and the ETP tax rate for excessive components of 47 per cent. This rate is even higher once you consider the application of the surcharge.

The government seeks to reduce the tax rate on the excessive component of certain eligible termination payments to more closely align the overall tax rate with the personal top marginal tax rate. This measure was taken to the 2001 federal election as part of the government’s better superannuation system package, so it has been around for quite a while. This measure simply tries to
avoid a situation where the effective tax rate on the excessive component of an ETP from a superannuation fund exceeds the top marginal tax rate. The measure will reduce the tax rate on the part of the excessive component that represents the tax element of the post-June 1983 component from 47 per cent to 38 per cent, plus the Medicare levy.

The amendment makes a very clear statement. It is clear now from the Labor Party’s opposing of the schedule that it supports a higher top marginal tax rate for superannuation— that is, a tax rate of at least 56 per cent. The fact that the Labor Party supports a higher marginal tax rate of 56 per cent is apparently now the Labor way. I suppose we can at least be relieved that the recent brawling over tax in the Labor Party has resulted in Labor supporting a 56 per cent higher marginal tax rate for superannuation.

Senator Sherry—You introduced it.

Senator COONAN—I notice that Senator Sherry is a bit sheepish. He has tried to distinguish his previous approach to this very problem back in 2001, when he spoke in favour of a bill that ensured that employees would not pay more than the top marginal tax rate plus the Medicare levy when receiving an excessive ETP directly from the employer. Indeed, Senator Sherry’s precise words were:

The bill will also ensure that employees will not have to pay an effective tax rate higher than the top marginal tax rate plus the Medicare levy when taking their ETP as cash.

And that:

The Labor opposition—
on that occasion—
will be supporting this legislation.

Now we see Senator Sherry very embarrassed and a bit sheepish— a spectacular backflip on his part—as he tries unsuccessfully and fails miserably to distinguish his approach in 2001 from what he is now trying to do. Both the Labor Party and the Democrats supported the bill in 2001 that reduced the tax rate on excessive ETPs paid directly from the employer. The principle behind that bill is the same as the principle here, and nothing that has been said tonight distinguishes it.

It is clear that the Labor Party now supports tax cuts for the top marginal tax rate—at least if one believes the new Labor leader, the member for Werriwa—unless, apparently, it is for superannuation and then, of course, it is 56 per cent. That is what the Labor Party is now saying it supports. When Senator Sherry talks about the Labor way, it is certainly schizophrenic. You have the member for Werriwa saying that the top rate is too high and there should be tax cuts, and now you have Senator Sherry coming into this place and saying that the top rate should be 56 per cent. It is very difficult to follow which is the Labor way.

The government has taken the prudent course and has opted for a model that will alleviate incidences of overly high taxation.
with a minimum of administrative burden. In moving this amendment, the opposition has made a very clear statement—or so I take it from this debate tonight. They support a top effective marginal tax rate of at least 56 per cent in respect of superannuation benefits. The government certainly does not support this opposition amendment.

Senator SHERRY (Tasmania) (6.25 p.m.)—Senate Coonan was correct on one thing. She went through the elements of the different taxes that apply in respect of mon- eys in excess of ETP. The reason you get to a 56 per cent rate, in some cases at least, is that this government introduced the tax. This Liberal government introduced the surcharge back in 1996. We actually did discuss this issue—

Senator Coonan—That is no reason not to pass this.

Senator SHERRY—We will get to that in a moment. It was the Liberal government that introduced the surcharge after having said in the run-up to the 1996 election—and I can recall it well—that there would be no new taxes and no increases in existing taxes. And the first thing they did, of course, was to introduce the surcharge tax on contributions to super. That is why we have this rate today, which the government is now trying to re- duce. This was pointed out at the time, back in 1997, when we debated the surcharge measure. But, no, the Liberal Party said it was fundamentally fair to introduce this new tax on superannuation.

Senator Coonan—You support 56 per cent tax for super.

Senator SHERRY—And this is how this 56 per cent rate, for some people, Senator Coonan—

Senator Coonan—You’ll regret that.

Senator SHERRY—You introduced it! You supported it. You voted for this, and here today—

Senator Coonan—we’re trying to take it off, you fool.

Senator SHERRY—Senator Coonan is getting very personal. It is not the time of year to do that, Senator Coonan—we are trying to progress the legislation and be co- operative. The Liberal Party—

Senator Coonan—I’m trying to be real.

Senator SHERRY—Well, get real. Why did you not fix this problem? If you think it is a problem today, why did you not fix this problem when you introduced this new tax yourself six years ago? Of course it was not fixed six years ago. Since 1991, when I made my last remarks on this particular issue—or an issue related to this—the Liberal govern- ment, a few weeks ago, has reduced an exclusive tax cut for high-income earners on their superannuation. It is in the light of ap- proaches like that to the taxation of superan- nuation that the Labor Party is saying enough is enough. They got a tax cut a couple of weeks ago. I am more than happy for Senator Coonan to go out and tell the world that they have cut the tax on superannuation for people earning more than $95,000. I have had Liberal Party members say to me, ‘We have been at the Liberal Party. We want them to reduce these taxes on superannuation for people earning more than $95,000. Damn everyone else. Don’t cut the tax for middle-income Australia on their super. We just want ourselves looked after.’

Senator Coonan—you’re a cracked re- cord.

Senator SHERRY—But it is getting through, Senator Coonan, I can tell you that. It is getting through—thank goodness—that this Liberal Party stands for exclusive tax cuts on superannuation for high-income earners only, and I will gladly repeat this
over and over again in the lead-up to the next election. There have been three tax cuts since this government was elected. We had the sandwich-and-milkshake tax cut of $4 or $5 a week on average and we have had two other tax cuts, both on superannuation and both for high-income earners. That is the Liberal Party’s priority. That is what it stands for, and Labor will not support it. Labor is taking a stand. You introduced the tax; you live with it—no exclusive tax cuts on superannuation confined only to high-income earners earning more than $95,000.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.29 p.m.)—It is of course important, as I said in my remarks in relation to this amendment, that the 56 per cent tax rate excludes the surcharge—as I am sure Senator Sherry, if he has the expertise professed, would know. It only includes contributions tax and ETP and they, of course, were both Labor taxes. It is a shame that Labor did not fix that up.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that schedule 6 stand as printed.

Question agreed to.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator SHERRY (Tasmania) (7.30 p.m.)—Labor opposes schedule 8 in the following terms:

(3) Schedule 8, page 71 (line 2) to page 82 (line 12), TO BE OPPOSED.

Whilst Labor has no objection to tax loss measures as a general policy principle, it has made a responsible call that, given current policy priorities—particularly regarding our health system—the money would be better spent elsewhere. Labor has taken the position that these moneys would be better directed to our health system—namely, to Medicare. That was announced in the response to the last budget. Therefore, Labor opposes this schedule for those reasons.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that schedule 8 stand as printed.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (7.32 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

LEGISLATIVE INSTRUMENTS BILL 2003

LEGISLATIVE INSTRUMENTS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003

In Committee

Consideration resumed.

LEGISLATIVE INSTRUMENTS BILL 2003

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.33 p.m.)—I move government amendment (1) on sheet QB206:

(1) Clause 4, page 4 (line 5), omit “indicate”, substitute “indicates”.

This is a technical correction to clause 4 adding a letter ‘s’ to one word. I commend the amendment to the committee.

Senator LUDWIG (Queensland) (7.33 p.m.)—This is a technical amendment, so we do not have any difficulty supporting it.

Question agreed to.
Senator GREIG (Western Australia) (7.34 p.m.)—I move Democrat amendment (1) on sheet 3184 revised 2:

(1) Clause 7, page 8 (table item 4), omit the table item.

This amendment seeks to remove guidelines made under section 8A of the Australian Security Intelligence Organisation Act 1979 from the list of instruments which are exempt from disallowance. The Democrats have previously argued that these guidelines should be made subject to full parliamentary scrutiny by making them disallowable. They are guidelines which govern the procedures to be followed by ASIO when it questions and detains innocent Australians. The Democrats of course vehemently opposed the introduction of these powers and expressed strong concerns about them at the time. Now that they are law in this country, we accept that it is imperative for parliament to scrutinise the procedures governing their exercise. Given the new Attorney-General’s enthusiasm for increasing the powers of ASIO, the Democrats have a very real concern that, if ASIO were to find some of the requirements in the guidelines too inconvenient to comply with, the government could proceed to alter the guidelines and there would be nothing this parliament could do to stop that. Our amendment is designed to prevent that very situation and to ensure that any amendments that are made to the guidelines will be subject to parliamentary scrutiny and can be disallowed if necessary.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.36 p.m.)—The government oppose Democrat amendment (1). The guidelines are not legislative. Their inclusion in the table is for avoidance of doubt. The ASIO Act already deals with public disclosure of the guidelines, which are tabled in both houses of parliament. For those reasons, we believe that the Democrat amendment is inappropriate and we do not support it.

Question negatived.

Senator GREIG (Western Australia) (7.36 a.m.)—by leave—I move Democrats amendments (2), (6) and (7) on sheet 3184:

(2) Clause 7, page 11 (table item 24), omit the table item.

(6) Clause 44, page 46 (table item 44), omit the table item.

(7) Clause 54, page 58 (table item 51), omit the table item.

These amendments seek to remove the so-called ‘Henry VIII’ clauses contained in the bill. The bill sets out three separate tables of instruments. The first lists instruments that are not considered to be legislative instruments for the purposes of the bill. The second lists instruments which, although they are legislative instruments in every other respect, are exempt from disallowance. The third lists instruments which are exempt from the automatic sunsetting regime. Each of these tables includes an item which enables the government to make regulations to add additional instruments to the table. It is these items that we Democrats seek to oppose. In their evidence to the Senate Standing Committee on Regulations and Ordinances, Mr Stephen Argument and Professor Dennis Pearce expressed the view that the Henry VIII clauses in the bill represent an:

... inappropriate delegation of legislative power, contrary to paragraph (iv) of the terms of refer-
ence of the Senate Standing Committee for the Scrutiny of Bills.

Naturally, the government’s argument in support of these clauses is that any regulations made to add instruments to the list will themselves be disallowable, and this provides an opportunity for parliamentary review. In responding to that argument I draw the chamber’s attention to the concerns expressed by Ms Jennifer Burn, who submitted:

While legislative instruments are subject to tabling and potential disallowance, there is always the potential that the time delay that can accompany the tabling requirements and parliamentary scrutiny can be detrimental to the parliamentary review process. Amendments to the table are potentially so significant that they should be made by the Parliament.

The Democrats agree with that, as I said in my speech in the second reading debate on this bill. However, the Democrats also believe that exempting instruments from the regime established by this bill is something which should be realistically and proactively debated by parliament, rather than simply disallowed. We believe that the onus must be on the government to establish a case for any additional exemptions, and I am confident that the chamber will efficiently consider any proposals for additional exemptions under those circumstances. These provisions represent an inappropriate delegation of legislative power by the parliament and, on that basis, they should be opposed.

Senator LUDWIG (Queensland) (7.39 p.m.)—We have had an opportunity to look at what the Senate Standing Committee on Regulations and Ordinances Committee said in relation to the amendments moved by Senator Greig. I note that the committee refers to the issue of Henry VIII clauses in paragraph 4.31 of its report. On this issue, Ms Jennifer Burn stated that Henry VIII clauses were problematic and then went on to explain why. However, we note that the committee refrained from recommending an amendment to these provisions, on the basis of an assurance by the Attorney-General’s Department that amendments to the tables of exempt instruments would be made by primary legislation in new situations—that is highlighted in paragraph 4.34 of the committee’s report—and also on the basis that regulations seeking to create new exemptions would themselves be disallowable by the parliament. On that basis, the opposition opposes the amendments moved by Senator Greig. As I have said, we note that no recommendation in that regard was made by the committee, and we take our lead from that. Clearly, the assurance that was provided by the Attorney-General seemed to satisfy the committee. There is no reason to upset that position.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.41 p.m.)—The government opposes the Democrat amendments. The provisions allow regulations to expand the list of instruments that are not legislative instruments for the purposes of the Legislative Instruments Act. That is, clause 7. They allow regulations to expand the list of instruments that are exempt from the disallowance regime. That is clause 44. They also allow regulations to expand the list of instruments that are exempt from the sunsetting regime. This is not about being able to alter the effect of an act without parliamentary oversight. Any regulation that prescribes an instrument for the purposes of one of the tables is itself subject to full parliamentary scrutiny, including disallowance. It is for this reason that the government believes that the parliament maintains full control over the list of documents and that, therefore, the Henry VIII provision does not apply in this circumstance. On that basis, the government opposes the amendments proposed by the Democrat.

Question negatived.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.42 p.m.)—I table two supplementary explanatory memoranda relating to the government amendments to be moved to these bills. The memoranda were circulated in the chamber on 25 November this year. I move government amendment (2) on sheet QB206:

(2) Clause 11, page 16 (after line 12), at the end of the clause, add:

(9) Subsection (1) applies in respect of a decision to issue a replacement certificate in the same manner as it applies to the original decision to issue a certificate under section 10.

Government amendment (2) clarifies that the replacement certificate issued by the Attorney-General after an order is made by a court to quash or set aside the Attorney-General’s original decision that an instrument is not a legislative instrument is subject to judicial review in the same manner as an original certificate. This amendment addresses the second recommendation made by the Senate Standing Committee on Regulations and Ordinances. We believe that it is a worthwhile amendment.

Senator LUDWIG (Queensland) (7.43 p.m.)—As the minister has said, the amendment is a clarifying amendment that was recommended by the regulations and ordinances committee. For those who are following the debate, it can be found in ‘Exemptions from the bill: non legislative instruments’—the discussion between paragraphs 4.4 and 4.10 of the committee’s report, which I would recommend as reading for those who wish to keep late hours.

Senator GREIG (Western Australia) (7.43 p.m.)—The Democrats concur with the arguments presented by the government. We will support the amendment.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.44 p.m.)—I move government amendment (3) on sheet QB206:

(3) Clause 12, page 16 (line 30) to page 17 (line 9), omit subclause (2), substitute:

(2) A legislative instrument, or a provision of a legislative instrument, has no effect if, apart from this subsection, it would take effect before the date it is registered and as a result:

(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would be affected so as to disadvantage that person; or

(b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

This amendment replaces the existing provision with a provision based on the words in the Acts Interpretation Act 1901. This amendment restores the status quo and reflects the current operation of the Acts Interpretation Act. It has always been the government’s intention that this provision should apply to the commencement of legislative instruments under the Legislative Instruments Bill in the same way that the Acts Interpretation Act provision operates for regulations and other disallowable instruments. This means that, when an instrument is to commence on a particular date, it commences at the beginning of that date. This provides certainty for when an instrument commences and avoids the law changing part way through a day. This is the effect of the existing provision in the Acts Interpretation Act. It provides certainty as to when an instrument commences.

Redrafting in an effort to modernise the provision in the Acts Interpretations Act has
caused an unintended error in the current provision set out in this bill. The need to re-
visit the provision was foreshadowed by government officials in answer to a question
on notice taken at the hearing of the Senate
Regulations and Ordinances Committee on
10 September this year. For those reasons, I
commend the government amendment to the
Senate.

Senator LUDWIG (Queensland) (7.45
p.m.)—The opposition does not support gov-
ernment amendment (3). I suggest to the
minister that the reasons advanced for this
amendment are entirely disingenuous. The
bill as printed provides that, where a legisla-
tive instrument is expressed to take effect
from a time before it is registered and at such
a time it would adversely affect the rights of
a person, it has no effect until the time it is
registered. The use of the word ‘time’ in this
instance is significant. The equivalent provi-
sion in section 48(2) of the Acts Interpreta-
tions Act 1901 uses the word ‘date’, which,
for those following the debate, is a different
word to ‘time’. We do not think they are
equal.

Clause 12(1) of the bill draws the distinc-
tion between the concepts of date and time,
but in clause 12(2) the word ‘date’ has been
deliberately changed to the word ‘time’. I
suggest that changing the word ‘date’ to
‘time’ is not merely a modernisation of draft-
ing style, as the government have belatedly
tried to suggest. I think they are trying to
find a hook to explain it, but I think it is in-
explicable. How can the government seri-
ously claim that ‘time’ is a more modern
word than ‘date’? It is just not an argument
that can be put in truth. The reality is that the
change can only have resulted from a con-
scious decision to change the word—to
claim otherwise is disingenuous.

It is clear that the government did not in-
tend to import exactly the same mechanism
into the Legislative Instruments Bill 2003 as
currently exists in the Acts Interpretation
Act. This is evident not only from the fact
that they have changed the word ‘date’ to
‘time’ but also because the new mechanism
is different in other respects. I will set out the
difference for the minister, and he might be
persuaded to abandon his amendment in this
instance. For example, the new mechanism
only renders an instrument inoperative until
it is registered, instead of inoperative for all
time, requiring the instrument to be remade,
which was the position under the Acts Inter-
pretation Act. There was a clear policy inten-
tion on the part of the government to alter the
disallowance mechanism, and changing the
word ‘date’ to ‘time’ formed part of that.

It is true that the Senate Regulations and
Ordinances Committee, on which the gov-
ernment held the chair and had half the
members, expressed a concern that, under
the provisions drafted, the community and
parliament may not be aware that the instru-
ment did not have effect between the time
the instrument was expressed to commence
and the time of its registration and a person
may be unaware of their right to seek a rem-
edy during that particular period. In re-
response, the office of the Attorney-General
undertook to review the provision to ensure
it did not diminish the protection currently
afforded by the Acts Interpretation Act to
members of the public. On this issue, the
committee specifically recommended:

... that where a legislative instrument ceases for a
period between its commencement and registra-
tion because it was determined to adversely affect
persons other than the Commonwealth:
(a) the Register should include a statement with
the instrument informing users that it ceased to
have effect for a specified period; and
(b) the Attorney-General should inform the Par-
liament that the instrument had ceased for a speci-
fied period.

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CHAMBER
What we have is a system where that issue can at least be known to members of the public or those that are examining the database. That was what the committee recommended to address its concerns. However, the government’s amendment does nothing of the sort. It does not follow from that point. If the government had genuinely intended to implement this recommendation, it could have easily done so in another way. There are other provisions in the bill which require information to be included in the register or require the Attorney-General to inform the parliament of various things. There is no reason why the government was prevented from doing that here.

These amendments were not circulated until 25 November—many weeks after the Melville Island affair. Clearly, what has happened is that the government has belatedly realised that its own decision to include the word ‘time’ in this provision may conflict with its absurd policy of retrospectively slicing off islands every time it fails to detect a boat until it is within cooee of mainland Australia. This amendment is politically backsliding, and the Minister for Justice and Customs should be aware of that to save the government from embarrassment of its own making.

I say to the government in this instance: do not try to pull the wool over this chamber’s eyes. You know that the provision is wrong. You know that the government amendment should not override what the Senate committee recommended and what it is currently in the legislative instruments bill. If you want to address the committee’s concerns, then go back and draw up an amendment that faithfully implements the committee’s recommendations, which I would suggest is easily done, and bring it back to the parliament so that we can have a look at it. But I do not think it is the case to argue that what you have is a reflection of the true position that the Senate committee would have otherwise had—or in fact would have arrived at—or that your amendment resolves their difficulty.

We will accept an amendment that is in line with the recommendation of the committee, however, if the government wishes to bring that back here. The government does hold a chair of that committee and half the members. Not even the government senators on the committee took issue with the use of the word ‘time’. But you did not only have government members on that committee; you had a lawyer and a number of submitters as well. If there was going to be an issue, I think it would have been picked up there.

The government should not try to change the true position through this mechanism. There was an issue. It needed to be picked up. The government need to redress it, but not in this way. It is not honest, I suggest, for the government to deal with it in this way. The government should not sacrifice the Legislative Instruments Bill 2003. They are not capable of admitting the position that they have backslided on. Melville Island raised an issue and the government went back, looked at the Legislative Instruments Bill 2003 and said, ‘Whoops! We had better fix it this way.’ You try to construe the position that was put by the committee as an issue that needed to be addressed; it is a sleight of hand. It is transparent, and I think you should own up.

Senator GREIG (Western Australia) (7.53 p.m.)—The Democrats oppose this amendment principally because we take a strong counterview to the principle that the government is trying to establish here. Specifically, we are of the view that the law ought not to have retrospective application in altering rights and liberties. I will not go into further detail on that, because I can speak further to that when I move the next Democ-
rat amendment, which presents the counter-
position. To pick up on the point that Senator
Ludwig has raised, if we were to support
Democrat amendment (2) following this
government amendment, if we were to sub-
stitute our amendment (2) on sheet 3230 for
what the government now proposes, given
that we use the word ‘time’ instead of ‘date’,
that would very much prevent the kind of
Melville Island situation that we witnessed
recently.

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (7.54
p.m.)—I might just point out that the issue of
Melville Island and the excision thereof is
nothing to do with this. It is a question of
consistency with the Acts Interpretation Act.
It made sense to have that consistency in
relation to the legislation which I have men-
tioned and this bill. The Melville Island issue
occurred only recently—I think on 4 No-
vember. The decision by the Attorney-
General that this amendment should be put
forward was made on 30 October this year,
so the decision was made prior to the exci-
sion of Melville Island.

Senator LUDWIG (Queensland) (7.55
p.m.)—Perhaps the minister could indicate
when the amendment was drafted. You indi-
cated that the minister might have made the
decision on 30 October. The opposition is not
convinced. There was an issue and some-
thing needed to be drafted; that is clear from
the Senate committee. It is a question,
though, of whether you are using this provi-
sion to fix up what I think is a political fix in
relation to the Melville Island affair, because
you have not explained to the committee the
difference between ‘date’ and ‘time’. You are
effectively arguing that they are the same.
You say they are; I am happy to be con-
vinced otherwise.

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (7.55
p.m.)—The decision for an amendment is
put to the minister or Attorney-General by
way of a brief. The amendment is agreed to
and then the provision is drafted. The deci-
sion that there should be consistency and that
this amendment should provide for the effect
of the instrument taking place from the be-
ginning of the day was made by the Attor-
ney-General on 30 October. That is the cru-
cial part. The drafting follows. It is the deci-
sion that is crucial, and that was made prior
to the Melville Island excision.

Senator LUDWIG (Queensland) (7.56
p.m.)—Minister, why don’t you draft an
amendment to the Legislative Instruments
Bill 2003 that reflects the committee’s con-
cern rather than put forward this amend-
ment?

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (7.56
p.m.)—I said earlier that I think the issue
was raised on 10 September when an official
gave evidence. I am advised that it was an
official from the Attorney-General’s Depart-
ment who raised this as a concern. The gov-
ernment seized upon that and chose to take
up the issue raised by the official. It thought
that the evidence was a good reason for this
amendment and it had a preference for that.

Question negatived.

Senator GREIG (Western Australia)
(7.57 p.m.)—I move Democrat amendment
(2) on sheet 3230:

(2) Clause 12, page 16 (line 30) to page 17
(line 9), omit subsection (2), substitute:

(2) A legislative instrument, or a provision
of a legislative instrument, has no
effect if, apart from this subsection, it
would take effect before the time at
which it is registered and as a result:

(a) the rights of a person (other than the
Commonwealth or an authority of the
Commonwealth) as at the time
of registration would be affected so
as to disadvantage that person; or

CHAMBER
(b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the time of registration.

(2A) To avoid any doubt, subsection (2) applies to a legislative instrument that takes effect before the time at which it is registered either:

(a) because it is expressed to take effect before that time; or

(b) by virtue of the operation of subsection 3(2) of the Acts Interpretation Act 1901.

Procedurally I am not able to move the Democrat amendments together, but I note that this amendment links with Democrat amendment (1) on sheet 3231, relating directly to the consequential amendments bill. As I indicated in my previous contribution, our amendments go to the heart of when an instrument will commence under the new regime and seek to prevent the retrospective alteration of rights and liberties. The Senate’s Legal and Constitutional Legislation Committee identified a potential complication relating to the provisions regarding the retrospective alteration of rights and liberties in both the principal bill and the consequential amendments bill. That issue related to the drafting of the new provisions, which stated that instruments which had a retrospective prejudicial effect would be of no effect but only in respect of the period before they were registered. This differed from the existing provision in the Acts Interpretation Act which provides that an instrument which has a retrospective prejudicial effect ceases and must therefore be remade.

The Attorney-General’s Department has indicated that its intention in redrafting this provision was simply to modernise the wording of the provision. It undertook to clear up the ambiguity created by the new provisions. However, before it did so, we witnessed the political and social incident that we now know as the Melville Island issue. As we know, what happened in that situation was that the minister for immigration sought to excise Melville Island from Australia’s migration zone after—and ‘after’ is the key word—the 14 Kurdish asylum seekers had landed on the island.

What happened on that day was that the minister effected the relevant instrument around six o’clock in the evening after the asylum seekers had landed but, by virtue of the operation of section 3(2) of the Acts Interpretation Act, the government claimed that the instrument had commenced at midnight on the preceding night. Whether or not the instrument did in fact commence from midnight has subsequently been disputed on the basis that the instrument in question was expressed to commence on gazettal and not on a particular date. We Democrats hope that this issue will eventually be determined by the courts. In any event, what this instrument demonstrated is that the Howard government is willing to rely on section 3(2) of the Acts Interpretation Act to retrospectively alter the rights of individuals, despite the prohibition against prejudicial retrospectivity.

In redrafting the provisions dealing with retrospectivity, the government has gone much further than simply addressing the issue identified by the Senate Legal and Constitutional Legislation Committee. It has also sought to retrospectively alter the rights of individuals. For these reasons, we Democrats opposed government amendment (3) on sheet QB206 and will oppose government amendment (1) on sheet QB207. We will also be seeking to amend existing provisions dealing with prejudicial retrospectivity in both the principal bill and the consequential amendments bill to prevent the government from attempting to make another instrument like the instrument excising Melville Island.
We Democrats believe that it must be made abundantly clear and unambiguous that no prejudicial retrospectivity is permitted, even if that retrospectivity arises as a result of the operation of section 3(2) of the Acts Interpretation Act and is limited to just a few hours. That is what these amendments on sheet 3230 and sheet 3231 aim to do.

Senator LUDWIG (Queensland) (8.01 p.m.)—The opposition acknowledge what the Democrats are trying to achieve, but we are not persuaded that there is a need for these amendments in the way that they have been drafted. I do not know whether the Senate committee made a recommendation as such about the operation of clause 12(2) but I think it went far enough to explain that the issue of clause 12(2) can be addressed by an amendment that faithfully implements its recommendation. I think the government is in a position to draft it as accurately as it could have done, not that it did—that is, a requirement to annotate the register and notify the parliament if a particular instrument did not have effect for a certain period. It is open to the government to bring in an amendment to do just that and no more. I do not think there is any necessity to go any further than that.

As to the amendment moved by Senator Greig, I understand what he is trying to achieve in doing so. I think it does more than what the government could do to rectify this issue and maintain a faithful position with the original Senate committee report. I think if we start with that as the base or the principle from which to operate then at least we are on safe ground. Although opposing your amendment, I still take this opportunity to ask the government to fix this issue, and it can do quite simply.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.03 p.m.)—The government oppose the Democrat amendment for the reasons proposed in government amendment (3). I do not wish to go over those grounds again, but we certainly oppose this amendment. We believe the reasons outlined in government amendment (3) are valid and we hold to those.

Question negatived.

Senator GREIG (Western Australia) (8.04 p.m.)—I move Democrat amendment (3) on sheet 3184 revised 2:

(3) Clause 17, page 21 (lines 7 to 13), omit subclause (1), substitute:

(1) Subject to section 18, before a rule-maker makes a legislative instrument, and where the proposed instrument is likely to restrict competition or have a direct, or a substantial indirect, effect on:

(a) business; or
(b) any other sector of the community;
or
(c) human rights or civil liberties; or
(d) the natural, Aboriginal, cultural or built environment;

the rule-maker must ensure that appropriate consultation is undertaken.

This amendment seeks to extend the circumstances in which consultation is encouraged, and it is worth noting that it is modelled on a previous Democrat amendment which has previously been passed by the Senate. Currently the bill provides that the obligation to undertake appropriate consultation applies particularly where the proposed instrument is likely to have a direct or a substantial indirect effect on business or to restrict competition. The Democrats believe that this singling out of business and competition elevates these issues above a range of equally important matters in relation to which consultation should be encouraged, particularly matters such as environmental impact and effects on human rights and civil liberties.
Senator LUDWIG (Queensland) (8.05 p.m.)—The opposition is prepared to support this amendment. The Australian Labor Party, it is clear, have had a long history of consultation and commitment to greater public engagement in the legislative process, particularly where legislation impacts on people’s human rights. We recognise the government has a different view but we believe that it should be prepared to consider an amendment of this kind. I think it would be helpful to the debate if the government did consider some of these amendments that have been put up. We are trying to maintain a principal position in relation to the Legislative Instruments Bill 2003. The opposition have engaged in the process quite extensively. Senator Ellison should be aware that, the Senate Legal and Constitutional Legislation Committee, of which I was a member, has had a couple of experiences of late of what could only be described as a lack of consultation by the Attorney-General. We have been disappointed with their engagement in the consultative process with various bodies. I will not go into the specifics of it. I am sure that the relevant advisers of the Attorney-General could perhaps help in that area.

We will support an amendment which includes provision for this type of public engagement in the legislative process. It seems to be that there has been consultation. We await the next Attorney-General’s bill from the legal and constitutional committee—at least I do—to see whether or not they have passed the test again. We have asked them to ensure that they do consult and consult widely. As yet, I have not had a report back about that. I will take the opportunity to either congratulate them if they do or, if they do not, advise you again where they might otherwise show a lack of public engagement. But at this point we are prepared to accept the Democrat amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.07 p.m.)—The existing provisions that deal with consultation require rule makers to be satisfied that all appropriate consultation that it is reasonably practical to undertake has been undertaken before making a legislative instrument. The explanatory statement that is tabled with each legislative instrument must set out what consultation has taken place—and, if none has, explain why that is the case. For that reason, the parliament is given oversight in relation to the consultation. For those reasons, the government does not believe that Democrat amendment (3) is necessary and therefore opposes it.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.08 p.m.)—I move government amendment (4) on sheet QB206:

(4) Clause 20, page 23 (after line 7), after subclause (1), insert:

(1A) The Secretary must cause steps to be taken to ensure that legislative instruments that are registered are available to the public.

This is a simple amendment that requires the Secretary of the Attorney-General’s Department to require steps to be taken to ensure that legislative instruments are available to the public. The amendment addresses recommendation No. 6 of the Regulations and Ordinances Committee. I commend the amendment to the committee.

Senator LUDWIG (Queensland) (8.08 p.m.)—These amendments implement various Senate committee recommendations and are supported by the opposition. Given the time, I will not go to the particular provisions; there are quite a number of them. I am not sure whether the government wants to move these amendments in a block, but I am happy to deal with them individually. It
seems that in this instance the government has followed the recommendations of the Senate committee. I am pleased to congratulate the government, at least in this instance, for getting the drafting right.

Senator GREIG (Western Australia) (8.09 p.m.)—This is a positive administrative step and it has the support of the Democrats.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.09 p.m.)—I move government amendment (5) on sheet QB206:

(5) Clause 23, page 25 (line 12), at the end of the subclause, add “and annotate the Register as so rectified to explain the nature of the rectification, the date and time it was made and the reason for it”.

This amendment is the result of the fifth recommendation of the Regulations and Ordinances Committee and amends clause 23 to require that the register be annotated to show when an instrument has been rectified by explaining the nature of the rectification, the date and time it was made and the reason for the rectification. This amendment will enable a person who is affected by an instrument which is then altered to know what the law was at the time the instrument was registered, at which time it is authoritative, when it was changed, what those changes were and why it was changed. It is a fairly straightforward amendment and I commend it to the committee.

Senator LUDWIG (Queensland) (8.10 p.m.)—It is a straightforward amendment and the opposition supports it.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.10 p.m.)—by leave—I move government amendments (7) and (8) on sheet QB206:

(7) Clause 42, page 40 (line 18), after “moved and”, insert “(where relevant)”.

(8) Clause 42, page 40 (line 35), after “moved and”, insert “(where relevant)”.

These amendments are, again, fairly straightforward. They add the words ‘(where relevant)’ to references to motions to disallow being seconded. The amendments acknowledge that seconding of motions is not relevant to current Senate practice but still occurs in the House of Representatives. This addresses recommendation No. 7 of the committee report and is eminently sensible.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.11 p.m.)—I indicate that clause 43 will be opposed in the following terms:

Clause 43, page 41 (line 4) to page 42 (line 30), to be opposed.

Government amendment (9) repeals proposed clause 43, which allowed deferral of consideration of a motion to disallow a legislative instrument. The removal of this clause gives effect to recommendation No. 8 of the committee’s report. The committee was of the view that the provision may be difficult to put into practice where there is a requirement to make complex amendments, particularly those requiring consultation, and that the current disallowance regime may be more suitable for resolving such matters.

The TEMPORARY CHAIRMAN—The question is that clause 43 stand as printed.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.11 p.m.)—by leave—I move government amendments (6), (10), (12), and (14) to (22):

(6) Clause 37, page 38 (lines 11 and 12), omit the note, substitute:
Note: Section 44 provides that certain instruments are exempted from the operation of section 42.

(10) Clause 44, page 42 (line 32), omit “Sections 42 and 43 do not”, substitute “Section 42 does not”.

(12) Clause 44, page 43 (line 8), omit “Sections 42 and 43 do not”, substitute “Section 42 does not”.

(14) Clause 45, page 46 (lines 4 and 5), omit ““, 42(1) or (2) or 43(2)”, substitute “or 42(1) or (2)”.

(15) Clause 45, page 46 (lines 11 and 12), omit ““, 42(1) or (2) or 43(2)”, substitute “or 42(1) or (2)”.

(16) Clause 47, page 47 (line 33), omit “or 43(2)”.

(17) Clause 47, page 48 (line 1), omit “or 43(3)”.

(18) Clause 47, page 48 (line 4), omit “or 43(3)”.

(19) Clause 47, page 48 (line 15), omit “or 43(2)”.

(20) Clause 47, page 48 (line 17), omit “or 43(3)”.

(21) Clause 47, page 48 (lines 22 to 26), omit subclause (5).

(22) Clause 48, page 48 (line 29), omit “or 43”.

Government amendments (6), (10), (12), and (14) to (22) remove references to clause 43 and are consequential on government amendment (9).

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.13 p.m.)—by leave—I move government amendments (11) and (13):

(11) Clause 44, page 43 (lines 6 and 7), omit all the words from and including “unless” to the end of subclause (1), substitute:

unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable.

(13) Clause 44, page 43 (line 11), after “enabling legislation”, insert “or by means of some other Act”.

Government amendment (11) amends subclause 44(1) to make it clear that a regulation or other instrument that is otherwise a disallowable instrument is not exempt from disallowance even if it relates to an intergovernmental scheme. This will ensure that any instrument that is currently disallowable will continue to be disallowable under the new bill. Government amendment (13) amends subclause 44(2) to make it clear that an instrument listed in the table in clause 44 of the bill as being exempt from disallowance is not exempt if it is otherwise a disallowable instrument. As with government amendment (11), this will ensure that any instrument that is currently disallowable will continue to be disallowable under the new bill. I commend both of these amendments to the committee.

Senator LUDWIG (Queensland) (8.14 p.m.)—These amendments are uncontroversial from the opposition’s perspective, although, when you start talking about exempt instruments otherwise subject to disallowance, it certainly lends weight to the confusion that people have. But hopefully the Legislative Instruments Bill 2003, should it pass, will clarify a lot of the legislative instruments that are about so that we can and do address them in a more even way.

Question agreed to.

Senator GREIG (Western Australia) (8.15 p.m.)—I move Democrat amendment (4) on revised sheet 3184:

(4) Clause 44, page 42 (line 32) to page 43 (line 7), omit subclause (1).

This amendment addresses the exemption of intergovernmental schemes from disallowance of instruments made pursuant to national legislative schemes. We do not believe that such an exemption is justified.
Senator LUDWIG (Queensland) (8.15 p.m.)—I did indicate during the second reading stage of the debate—I am not sure whether Senator Greig was available during that time; he may have seen it on the monitor—that, for the reasons outlined then, the opposition are prepared to accept the provisions of this bill dealing with intergovernmental schemes. We oppose the amendment as put. We accept that the provision in the Legislative Instruments Bill 2003 is the right one to take and the right balance to be struck; we do not accept that the position of the Democrats is consistent with the Legislative Instruments Bill 2003 or with the thrust of the legislation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.16 p.m.)—The government oppose the Democrat amendment which has been outlined by Senator Greig. To the extent that instruments are legislative in nature, then the instruments must be registered and tabled. All regulations that are made under existing enabling legislation are disallowable, and it is intended that this would continue to be the case for regulations made after the Legislative Instruments Bill 2003 commences. All other legislative instruments made under existing enabling legislation are disallowable instruments only if that legislation declares that this is the case. Whether those instruments should or should not be subject to disallowance is a matter that would have been considered at the time that the enabling legislation was debated. We would argue that the Legislative Instruments Bill 2003 preserves this position and, for the reasons that I have outlined, the government do not see our way clear to support this amendment by the Democrats.

Question negatived.

Senator GREIG (Western Australia) (8.17 p.m.)—I move Democrat amendment (5) on revised sheet 3184:

(5) Clause 44, page 45 (table item 34), omit “2B or 12, subsection 13(1), section 20B”.

This amendment relates to clause 44 of the bill on exemption of quarantine instruments. We are of the view that we ought to omit the table item. Instruments made under section 2B, for example, allow the Governor-General to make a proclamation that an epidemic exists. Upon making a proclamation of an epidemic, the minister may take any action and give whatever directions that he or she considers appropriate to control the epidemic. It is an offence to fail to obey the minister or to obstruct a person acting under the direction of the minister. Given the severity of the consequences of making a proclamation under the provision and the difficulty of seeking appropriate legal remedies if the power is abused, we believe proclamations made under this section should be disallowable.

Section 12 allows the Governor-General to declare that a place is infected with quarantinable disease or pest. Such places are referred to as ‘proclaimed places’. Once a place is declared a proclaimed place, there are numerous stringent restrictions on the entry of products, vessels and aircraft from the place into Australia or into a different part of Australia. Again, the consequences of making a declaration under this section are extremely serious and can have catastrophic consequences for the residents of a particular place. Owing to this, we believe these declarations should be disallowable.

Subsection 13(1) allows the Governor-General to make proclamations specifying that particular ports or places shall perform particular functions, such as, for example, being the landing place for aircraft or for animals or plants, prohibiting the importation of any articles likely to introduce, establish or spread any disease or pest and specifying places as quarantine areas and declaring vessels, people and products subject to quaran-
tine. Places and items that are proclaimed are subject to significant restrictions. The importance of these proclamations and lack of appropriate avenues for review make it essential, we believe, that they are subject to disallowance.

Finally, section 20B allows for the Governor-General to declare that aircraft from a particular place cannot enter Australia due to the risk of introducing a disease. This provision also allows the Governor-General to place conditions on the entry of aircraft from a particular place. Acting contrary to the terms of a declaration is an offence carrying a maximum penalty of up to 10 years imprisonment. Again, the seriousness of declarations made under this section makes it essential, we believe, that it be subject to disallowance.

Senator LUDWIG (Queensland) (8.20 p.m.)—I note that it appears to be a matter that you have drawn from the additional comments by Senator Andrew Bartlett in the Senate Standing Committee on Regulations and Ordinances report. Senator Bartlett said:

I note the concerns expressed in relation to the 1996 bill, by the then Committee Chair, Senator O’Chee, regarding the exemption of quarantine proclamations from the disallowance regime.

He went on to say:

On the other hand, I note that such proclamations have never been subject to disallowance and that the Government argues it is important for these instruments to be depoliticised.

There is a recognition in that of the position being put. Senator Bartlett indicated:

I would like to reserve my position on the exemption of quarantine proclamations from disallowance pending further consultation.

We think it is, in fact, an argument for another day. As we understand the position from the government, the Legislative Instruments Bill 2003 does not create any new exemptions from disallowance and these instruments dealt with by the Democrat amendment are not presently disallowable. We acknowledge that there may be legitimate arguments in favour of and against them being made disallowable, but, as I have indicated, I think that is really a debate for another day. Therefore, we do not find ourselves in a position to support it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.22 p.m.)—Instruments made under the Quarantine Act are not currently disallowable instruments, because they are made on the basis of scientific assessment and not political judgment. That really sets them quite apart from any other instruments which result from, for instance, policy on social issues and other areas. When you are dealing with quarantine you have instruments which are based on scientific assessment. We believe they fall into a different category, and the Legislative Instruments Bill 2003 is not a vehicle to change the status quo for these instruments. Any debate on changes in relation to quarantine should take place when changes to the Quarantine Act itself are considered and debated. For that reason, the government opposes Democrat amendment (5).

Question negatived.

Bill, as amended, agreed to.

LEGISLATIVE INSTRUMENTS
(TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS)
BILL 2003

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.24 p.m.)—I move government amendment (1) on sheet QB207:

(1) Schedule 1, item 6, page 9 (lines 5 to 20),

omitsubsection (3), substitute:

(3) An instrument to which this section applies, or a provision of such an
instrument, has no effect if, apart from this subsection, it would take effect before the date of its notification under subsection (5) and as a result:

(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of notification would be affected so as to disadvantage that person; or

(b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification.

This amendment replaces the existing provision dealing with the commencement of a provision that has retrospective adverse effect with a provision based on the existing wording in the Acts Interpretation Act 1901. The reasons for this government amendment are the same as those which related to government amendment (3) to the Legislative Instruments Bill 2003. They are really self-explanatory. I commend the amendment to the committee.

Senator LUDWIG (Queensland) (8.25 p.m.)—Labor oppose this amendment for the reasons articulated earlier. Given the time and the need to deal with this, I will not articulate the same debate again.

Senator GREIG (Western Australia) (8.25 p.m.)—For the same reasons I outlined previously, the Democrats oppose this government amendment. We believe Democrat amendment (2) on sheet 3231, which contains the reverse principle, is the better way to go. I will speak to that in a moment if this amendment is defeated.

Question negatived.

Senator GREIG (Western Australia) (8.25 p.m.)—I move Democrat amendment (2) on sheet 3231:

(2) Schedule 1, item 6, page 9 (lines 5 to 20), omit subsection 46B(3), substitute:

(3) An instrument to which this section applies, or a provision of such an instrument, has no effect if, apart from this subsection, it would take effect before the time of its notification under subsection (5) and as a result:

(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the time of notification would be affected so as to disadvantage that person; or

(b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the time of notification.

(3A) To avoid any doubt, subsection (3) applies to an instrument that takes effect before the time of its notification under subsection (5) either:

(a) because it is expressed to take effect before that time; or

(b) because of the operation of subsection 3(2).

This amendment principally does the reverse of what the government was trying to achieve. I spoke at length on this when I spoke to Democrat amendment (2) on sheet 3230, when I talked in particular about our concerns about Melville Island. This amendment is linked to that one; it is simply the consequential flowthrough. We believe it is a more appropriate and effective response and provides for a better bill. I seek the support of the committee for this amendment, as opposed to what the government was trying to achieve.

Senator LUDWIG (Queensland) (8.26 p.m.)—I think this is Groundhog Day. I think the Democrats will understand that we oppose the amendment for the same reasons we outlined earlier in relation to the amendment to the substantive bill that was before the committee.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.26 p.m.)—The government argument is the same as for Democrat amendment (2) on the previous bill, the Legislative Instruments Bill 2003. The government opposes the Democrat amendment as previously outlined in that argument; we do not want to be repetitious.

Question negatived.

Bill agreed to.

Legislative Instruments Bill 2003 reported with amendments; Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003 reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.28 p.m.)—I move:

That the bills be now read a third time.

Question agreed to.

Bills read a third time.

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.28 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 7 (Defence Legislation Amendment Bill 2003).

Question agreed to.

DEFENCE LEGISLATION AMENDMENT BILL 2003

In Committee

Consideration resumed from 1 December.

(Quorum formed)

The TEMPORARY CHAIRMAN (Senator Ferguson)—The committee is considering amendments (1) and (2) on sheet 2961 moved by Senator Bartlett. The question is that the amendments be agreed to.

Senator GREIG (Western Australia) (8.32 p.m.)—When we finished discussing these amendments to the Defence Legislation Amendment Bill 2003 last night, I do not think we had heard from the minister other than to say that these amendments were not government policy. He did not articulate why; he merely stated it was not policy. There was no illustration or explanation. From Senator Evans I received some mixed messages, and I would like to explore them a little. The discrimination experienced by same sex couples in the military is, to a large degree, relatively easy to fix without repercussions in other areas of the law because of the way that ADF issues are quarantined under the act and administratively within their own ambit. To illustrate this, I want to talk briefly about a letter I wrote to General Peter Cosgrove on 25 July this year. I was asked by ACT constituents, not mine, to pursue this particular case following a Human Rights and Equal Opportunity Commission hearing, and I would like to read into the record the letter I wrote to the General which was not answered. It read as follows:

Dear General Cosgrove

Discrimination Against Gay and Lesbian ADF Members

You would no doubt be aware that the ban on gay and lesbian people serving in the military was lifted in 1992, more than a decade ago.

Contradicting this however is the ongoing discrimination against gay and lesbian personnel in areas such as relocation expenses, housing loans, accommodation, superannuation death benefits and access to grief counselling.

In 2001, I questioned Major Gen. Willis about this ongoing discrimination in a Senate References Foreign Affairs Defence and Trade Committee inquiry into Recruitment and Retention Issues in the ADF.
When I asked why the ADF continued with this discrimination, I was told—

and I quote here from Major General Willis—

I understand that, yes, but at this stage of the game the policy that we have in Defence is supported by the Marriage Act (1961) which stipulates that marriage, according to law in Australia, is the union of a man and a woman, and the Sex Discrimination Act (1984) which defines a de facto spouse as being ‘a person of the opposite sex’. That is government policy and that is where it ends as far as we are concerned.

That quote was from the Senate committee Hansard of 25 June 2001. I went on to say in my letter to the General:

Since this time, the Federal Human Rights and Equal Opportunity Commission (HREOC), has considered this claim and rejected it.

HREOC considers that this argument for continued discrimination against gay and lesbian service personnel by the ADF cannot be justified or defended.

Having lodged a complaint against this discrimination, particularly on the issue of the ADF Home Purchase Assistance Scheme—

and I name here the member, whom I will not name now but it is in the letter; let us call him X—

X was advised by HREOC, in part, that—

and I quote here from the return letter from HREOC following its deliberations—

“Section 4 of the SDA [Sex Discrimination Act] restricts the definition of de facto spouse to a person of the opposite sex of their partner. This means that while it is unlawful to discriminate against a person on the basis of the heterosexual de facto status of that person, the protection of the SDA does not extend to same sex couples. Therefore it is not unlawful to discriminate against a person on the basis that he or she is a member of a same sex de facto couple. The SDA does not prohibit the discrimination against same sex de facto couples contained in Defence Instruction 53-1.

But this is the important point. The finding from HREOC went on to say:

This does not mean, however, that the SDA is a barrier to those seeking to remove discrimination on the basis of same sex marital status. It would be incorrect to suggest that the SDA prevents the amendment of the definition of de facto marriages in Defence Instruction 53(1) to include same sex relationships.”

That was from Sally Moyle, Director, Sex Discrimination Unit, Human Rights and Equal Opportunity Commission, in February 2003. I went on in my letter to the General:

As I understand it, the ADF would have no power over extending Superannuation death benefits or pension entitlements to same-sex partners, as this would require Federal law reform.

However, on the issues of relocation expenses, on-base accommodation, grief counselling and housing loans, the ADF is empowered to eliminate discrimination against personnel in same-sex relationships.

On the basis of this information, I am wondering if and when the ADF will be moving to end this discrimination?

It seems very odd to me that the ADF, while priding itself on its policies of equity and non-discrimination, would continue to tolerate unacceptable levels of discrimination against some of its personnel in areas as basic as relocation expenses, accommodation and housing loans.

It seems odd to me also, that at a time when the ADF is eager to recruit and retain personnel, that these discriminatory social and financial barriers are placed in front of some personnel, and would doubtless be the cause of many other people choosing to avoid the ADF as a career path.

Several international comparisons, (including Britain [at least for the period of the recent Iraq war], Israel, Canada and New Zealand), also suggest that Australia has fallen behind reasonable benchmarks of fairness and equity.

Given that HREOC has claimed that the ‘Marriage Act definitions’ argument and ‘Sex Discrimination Act’ argument previously presented by the ADF to justify its ongoing discrimination
of same-sex partners is not valid, I ask the follow-
ing:

1) Does the ADF accept this ruling from
HREOC?

2) Will the ADF be challenging or
appealing the ruling?

3) Will the ADF be abiding by the ruling, acting on
the spirit of it and eliminating
current discrimination as a result?

4) Will the ADF be dismissing or ignoring
the ruling, and if so on what basis?

5) Will there be any review and reform of
DI (G) 53-1?

I look forward to your reply.

Yours sincerely

Senator Greig

It took some months before I got a reply. To
my genuine surprise, the reply came not
from General Cosgrove but from Senator
Hill, the Minister for Defence. I was not
looking for a ministerial or parliamentary
response; I was looking for a response from
the general. According to the Human Rights
and Equal Opportunity Commission, he is
empowered within his own ambit and within
his own jurisdiction, and he has a duty of
care to the people for whom he is responsi-
ble, to fix this discrimination without refer-
ence to parliament or to the minister.

The minister’s letter—it is in Perth; I was
unable to get it at short notice—was very
short and contained a number of grammatical
errors that were corrected in pen by the min-
ister. It simply said, ‘We don’t intend to
change our policy.’ So the answer I got was a
nonanswer. I found myself again in an ex-
traordinary situation where it seems that the
Defence Force points the finger at the gov-
ernment for the problem and for the intransi-
gence to reform in this area, yet the govern-
ment does the reverse. When I questioned
Senator Hill on this in question time some
weeks ago, his argument was, in part, that
the Defence Force is a conservative organisa-
tion that needs time to evolve. It has been 11
if not 12 years since we lifted the ban on les-
bian and gay people serving and I find it ut-
terly unacceptable that anybody would ad-

vance the argument that even more time is
needed before integration, understanding and
acceptance can be obtained within that ele-
ment of the Public Service. I would also find
it extraordinary if anybody advanced the ar-
gument that racial discrimination was a seri-
ous problem in the ADF—I do not believe
anybody would seriously suggest that the
ADF is a racist organisation—and more than
11 years was needed to come to terms with
it. Likewise, I do not believe, following the
introduction of women into the Defence
Force, that sexual harassment or sexism
would be tolerated or that anybody would
suggest that it takes more than 11 years to
come to terms with that. It is just not accept-
able.

Discrimination is endemic in some key ar-
neas and for no good or sensible reason. The
amendments that are moved by the Demo-
crats therefore go to the heart, on this occa-
sion, of the home loan assistance scheme for
Defence personnel in interdependent rela-
tionships, and that would include same sex
relationships. The amendment to the Home
Loans Assistance Act 1990 would swap
‘spouse’ for ‘interdependent relationship’,
which means a relationship between two
people that is acknowledged by both and
which involves residing together, being
closely interdependent and having a continu-
ing commitment to mutual emotional and
financial support. If the amendment we are
dealing with now is unsuccessful, then we
can move a further amendment which would
specifically open the scheme to Defence per-
sonnel in same sex relationships.

There are three main arguments in favour
of these amendments. Firstly, it is not expen-
sive; secondly, it is fair; and, thirdly, it is
simple. Unlike other areas of partnership
recognition—and we have teased out some of those in previous superannuation debates—there are no subsequent or consequential effects in other areas of law. Neither proposal will be particularly expensive, because we are talking about getting access to housing loans that offset the rent allowance that personnel would otherwise be getting. The total cost of the scheme in 2002-03, when there were some 6,500 recipients of the subsidy, was $7.4 million. The same sex amendment will be even cheaper than the interdependent measure—unless the government has information that the number of ADF personnel in same sex couples is greater than 30 per cent, which I doubt. The same sex amendment will probably come in at about the same cost as the expansion of eligibility that the government is promoting this evening. 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 the result of a physical or mental condition, which is expected to cost an additional $79,000 per year.

Whenever we put these sorts of amendments, as we often do in superannuation, the government and the ALP argue that there are flow-on effects and we have to look at the complex interaction of tax and superannuation. But that is not the case here with the Defence Home Loan Scheme, as it is a self-contained scheme with its own act. It will not impact on any other area and creates no unintended consequences.

Senator Evans commented on this bill last night with respect to same sex equality. It has always been our view that this ought to be done in a comprehensive way, not in a piecemeal way, and that we ought to look at all of the provisions and how they interact with social security law and other provisions. That does not apply here. But, even if it did, I would have to say, with respect to Senator Evans, that the argument he has advanced is not matched by Labor’s practice. Only a matter of weeks ago we saw Labor move a same sex couple amendment to the superannuation co-contributions bill. That was a specific, discrete, ad hoc amendment. It was not wholesale or comprehensive reform. As I said previously, we have seen a private member’s bill from Mr Albanese in the other place which in itself is a discrete, narrow piece of superannuation reform that is not wholesale, not all of government. And Ms Tanya Plibersek has a bill, the Australian Citizenship for Eligible De facto Spouses Bill 2003, dealing with definitions of spouse under the immigration act. But, again, it is another sectional, piecemeal, ad hoc, not wholesale and not comprehensive piece of reform.

With the government and the opposition both putting out furphies in arguing, as they did the other night, that they have not had time to consider these amendments, I must put on the record that the government were notified of our intention to move these amendments on 1 September—

Senator Chris Evans—And when was the ALP told? Be honest.

Senator GREIG—As I am advised, Senator Evans, I think you were told a day or so before.

Senator Chris Evans—No, it was late yesterday. The amendments were circulated after I spoke. Don’t be misleading.

Senator GREIG—On the understanding that the bill we were dealing with would not come up for 48 hours.

Senator Chris Evans—No. You can’t have it both ways, mate.

Senator GREIG—Having said that, how much time do you need? We are not dealing with rocket science here. This is a simple amendment that says, ‘Let’s end discrimina-
tion against same sex couples within the ADF under this housing loans scheme.’

Senator Ian Campbell—The bill’s been on the list for weeks. You could have circulated the amendments weeks ago.

Senator GREIG—I find it extraordinary that anyone could argue that not enough time was given to think about this. Is anybody seriously going to advance the argument that there are valid reasons to oppose this? I do not believe so. Yesterday, we heard Senator Evans say:

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 personnel.

That is fine, but we would urge the ALP to support the amendments. At the minimum, the amendments would give equality, for now, to same sex couples. With respect, Senator Evans, I would also make the point that an audit is not required. We know what the problem is: the definition of spouse that is peppered throughout all Commonwealth legislation and which is heterosexist in nature. There are two ways you can deal with that. You can amend the Marriage Act so that same sex couples can marry—I have previously attempted that in this place, but it was opposed by both the government and the opposition—or you can address legislation piece by piece. This is the opportunity to do that. The only alternative to achieve that would be to support our private member’s bill that was recently introduced and that I hope soon, if not tomorrow, to send to a committee which would give Labor the opportunity, along with us, to explore the broader issues of same sex couple discrimination.

Senator CHRIS EVANS (Western Australia) (8.47 p.m.)—Can I say at the outset that, prior to Senator Greig’s contribution, I was intending to vote for the amendments, but I think he has almost talked me out of them. I think you had better get Senator Bartlett back in here quickly. I suspect this reflects what seems to be a single issue focus on Senator Greig’s behalf. But the world is not quite as simple as he would indicate, and that is probably why Senator Ian Campbell left the Democrats for a more complex and more worldly view. Even though it is a wrong view, at least it is more worldly.

I indicated yesterday that the Labor Party had not seen the Democrat amendments and would not vote for them sight unseen. We were informed late in the afternoon that they would be moved. In fact, the second set of them landed on my desk as I sat down after having given my second reading contribution and as they were about to be moved by Senator Bartlett. As a result of that, I moved that the committee report progress so that we could deal seriously with the amendments, and that I have done.

I will not get drawn into an argument with Senator Greig about his view of the world and the Labor Party. I understand that he lost confidence in us and left us. I understand and regret that. For Senator Greig’s information, private members’ bills are not necessarily endorsed by the Labor Party. Members are allowed to move them, but they do not represent Labor Party policy. So the quote about our supporting private members’ bills or Labor members moving private members’ bills as an expression of Labor Party policy is a mistake on his part. But, anyway, I do not want to get distracted.

As I indicated yesterday, Labor resisted the temptation to amend the Defence Legis-
lation Amendment Bill 2003 on the basis that the bill contains important provisions related to medical fraud. We have no wish to delay these important penalty increases any longer than the 18 months it has taken the government to introduce the bill into the Senate. These are important reforms that have the strong support of the service community, and they are eagerly awaited. It is the case that this bill has been on the Notice Paper for a very long time. The Australian community holds our veterans and service personnel in the highest regard, and their sacrifice deserves strong protection from those who wrongly seek to claim the same honour and respect.

I expressed my disappointment last night that I had not seen the amendments before the debate commenced. But Senator Bartlett’s amendments do raise very important issues that are not unique to the Defence Force (Home Loans Assistance) Act 1990. They have relevance for a range of other Commonwealth legislation, including taxation, social security, veterans’ entitlements and other provisions. Labor does take these issues very seriously. Though we recognise the importance of getting this legislation through, we are also keen to ensure that the amendments proposed by Senator Bartlett are treated with the seriousness they deserve. As I say, for that reason, I was reluctant to indicate Labor’s position on the run last night when I had not even had a chance to work out what their impact was.

Now, having had time to reflect on them and having taken advice, I am able to indicate that Labor will support the Democrat amendments to the bill before the chamber today. I also note for the record that I do not think it is acceptable for the government to just say that they oppose the amendments simply on the basis that it is not their policy. I think it is incumbent on the government to advance an argument as to why they reject the amendments. What is it that is wrong with these amendments? What is the rationale that would oppose what seems to be a fairly clear-cut measure of removing discriminatory practices? I am prepared to listen to what the government have to say about that, but they have not as yet advanced any argument. That is one of the reasons why I am inclined to support the Democrat amendments.

The Democrat amendments, as I understand them, will have the effect of allowing couples in same sex and interdependent relationships joint access to the provisions of the Defence Force (Home Loans Assistance) Act 1990. This would provide same sex and interdependent couples with the opportunity to apply for defence home loans assistance in joint names. Under the current provisions of the Defence Force (Home Loans Assistance) Act, same sex couples and those in interdependent relationships are not able to apply for home loan assistance in joint names. If an ADF member in a same sex or interdependent relationship applies for home loan assistance under the act, they are eligible for the relevant assistance in their name only, not in joint names with their partner. We have received a number of letters and emails in relation to these issues. This is not an issue that goes to the entitlement of the ADF member; it is largely an issue about whether or not their partner can have their name on the title—whether or not they are allowed to own the property in joint names. It does not actually affect the ADF member’s entitlement. A gay or lesbian ADF member is entitled to the loan based on their own qualifications and service, but they are not allowed to have a same sex partner on the title. That seems to me to be a discriminatory provision that should not be supported.

I was contacted last night after the debate about this issue by an ADF member—it shows that somebody is listening late at
night—and she made the case that she was prevented from accessing many of the benefits that are available to fellow ADF members who are in heterosexual relationships. This is just one example. That is one of the reasons why Labor does not want to do this sort of reform on a piecemeal basis. There are a whole range of issues and a lot of them are interdependent and have flow-on effects. It is best done in a comprehensive manner. But it is clear that many in the ADF feel this same sense of concern about the discrimination against couples of the same sex and in interdependent relationships. The changes proposed by the Democrats are largely administrative in nature. I cannot see them having any large financial impact, because the entitlement for the member does not change.

Labor, as I say, would not generally consider amendments such as these on a case-by-case basis because it is our preferred approach to undertake same sex law reform with a more comprehensive, thorough, whole-of-problem approach. As the shadow Attorney-General, Mr McClelland, has previously indicated, Labor are committed to undertaking comprehensive same sex law reform in government. We are also committed to a full audit of all Commonwealth legislation to amend or remove discriminatory provisions. Labor generally would not support amendments that are not relevant to the intent of the legislation under consideration, but these amendments go directly to the eligibility and access provisions of the Defence Force (Home Loans Assistance) Act, and these amendments are not incidental to the omnibus bill under consideration. They will allow same sex and interdependent couples the opportunity to jointly apply for defence home loans assistance.

These amendments proposed by the Democrats are consistent with the action of the former Labor government, which lifted the ban on gays and lesbians joining the ADF. The former Labor government also undertook other important reforms in this area, including amending human rights and industrial relations legislation to include measures against sexuality discrimination. It seems to be a logical next step, after lifting the ban on homosexuals in the ADF, to remove discriminatory provisions in the Defence Force (Home Loans Assistance) Act. Labor will therefore support the Democrat amendments to allow same sex and interdependent couples the opportunity to apply for defence home loans assistance in joint names.

Labor remains fully committed to removing discriminatory provisions in Commonwealth legislation. Labor also reaffirms its general commitment to working in government with all groups to comprehensively address discrimination against all Australians in same sex relationships, not only those who are eligible for defence home loans assistance. I make the point—which I tried to make last night—that, in the end, only a government committed to removing discrimination will see these issues addressed adequately. While it is fine to use these debates to try and force the government to change its view, at the end of the day proper reform will only come when the government is committed to serious reform of these discriminations. Labor’s strong preference is for a comprehensive audit and action in a coordinated, thorough, whole-of-government process. Today’s issue is but one of many that detrimentally affect interdependent and same sex couples. Labor supports the amendments and urges the government to do likewise, to remove the discrimination in the provision of home loan assistance to members of the ADF. The government must readress its policy of discrimination.

However, I want to make this very clear because we are in a dilemma here. We know, by supporting the amendments, if the government insists on its position, that the gov-
ernment could either choose then to abandon the bill or to re-present it, having taken it to the House of Representatives and said that we not insist on our amendments. I want to make it very clear, because I think it is best to do this up front, that if the government fails to agree to the amendments and re-presents the bill, Labor will pass the bill. I have no doubt about that. Labor are committed to getting the bill passed this session. We urge the government to accept these amendments because they would be a welcome end to one discriminatory practice against same sex couples, but the benefits in relation to medal fraud were promised to the service and veterans community 18 months ago, and the delay in putting the bill before the Senate is already, in my view, unacceptable.

Labor will not allow these important provisions to be delayed even further and will not use the Democrat amendments as a means of preventing the legislation from passing in this session. I want to make it very clear to the government that there is no excuse for the legislation not to proceed. Labor will pass it. We will use this first consideration by the Senate to urge the government to reassess its position in relation to this matter. There is a very clear case of discrimination. It is a single measure that would address one contained discrimination against gay and lesbian members of the ADF. The government surely cannot pretend that they do not accept that there are gay and lesbian members of the ADF. As I say, the legislation allowing gays and lesbians to participate in the ADF was passed, I think, in 1990. Therefore, it seems to us to flow logically that those members of the ADF who are serving their country and risking their lives and who are on active operations continually in recent years ought to be entitled to the same provisions of the home loan assistance.

I hope the government does use this opportunity to address that discrimination but, at the end of the day, I want to make it very clear that Labor will pass this bill this session. We think the primary purpose of the bill is to deal with the medal fraud issue. We have made a commitment to the veterans community to pass that. If the government insists on its position and returns the bill to the Senate later this week asking that we not insist on the amendments, Labor will not insist on the amendments. So, I indicate on behalf of the opposition that we will support the Democrat amendments, subject to the government providing any compelling case as to why this discrimination should not be removed by passage of the amendments.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.59 p.m.)—In response to the amendments moved by Senator Bartlett to the Defence Legislation Amendment Bill 2003 and then addressed by Senator Greig, Senator Evans makes very good points. He has indicated a preference not to deal with this in a piecemeal fashion. I have heard similar positions put by Senator Sherry in relation to superannuation measures. But, having said that he did not want to deal with it in a piecemeal fashion, Senator Evans then made a case around the discrimination that does occur in some areas. He supported the case made by Senator Greig very eloquently, very successfully and very strongly. Having said that the Labor Party would not support dealing with this piecemeal—that it should be done comprehensively and across all of the legislation—he then said that on this occasion he would support it.

I respect those who seek to fight discrimination, regardless of what grounds it is on. Senator Evans makes the point quite correctly that there are people in same sex relationships—gays and lesbians—in the Australian Defence Force. I think all Australians would be flabbergasted to find that anyone comprehended otherwise. But the reality re-
mains that if you seek to deal with discriminatory measures within legislation it is better not to take an ad hoc approach. It is an overly simplistic approach to what all of us in this debate tonight agree is a very serious and important issue that does indeed deserve detailed consideration. For that you would need detailed consideration of all the defence legislation. I have asked my advisers here tonight to tell me what pieces of legislation would need to be reviewed. A short list at short notice includes the Military Superannuation and Benefits Act 1991, the Defence Force Retirement and Death Benefits Act 1973, the Military Compensation Act, the Safety, Rehabilitation and Compensation Act and of course the Defence Act 1903.

What we have before us is a relatively minor—however important—defence bill that seeks to amend provisions relating to persons who falsely represent themselves as returned service personnel or improperly use service medals or decorations. That is an important measure but, in the context of all of the defence legislation, a relatively small one. The bill also makes amendments to the Defence Force Discipline Act flowing from recommendations made by Brigadier Abadee as Deputy Judge Advocate General in relation to the military discipline system. It also makes amendments to modernise the titles of the Cadet Corps and, as other speakers have said, amendments to the Defence Force (Home Loans Assistance) Act.

The frustration for those who seek to end discrimination through legislative reform is probably similar to the frustration I noticed when in 1990 I drew to the attention of then Senator Graham Richardson, the minister for something—I think he might have been the arts minister but I could be wrong; he might never have had that portfolio—

Senator Chris Evans—I’m sure he did it very well.

Senator IAN CAMPBELL—He was a good minister, although he had lots of distractions. At that stage we were debating a bill to establish the National Maritime Museum. There was a provision in the legislation ensuring that only people under the age of 65 could serve on the board of the museum. As a young, idealistic senator—I am not so young now; I hope I am still as idealistic—I suggested that 65 was discriminatory and that we should not have that provision. I made the point that it would be appropriate for the National Maritime Museum to allow older people to serve on the board. I mentioned Rolly Tasker—that name would be familiar to Senator Greig—as the sort of person who might want to serve on the board of the National Maritime Museum. Even in those days Rolly was past 65. I think he is well past 75 now but hopefully going fit and strong. Senator Richardson used the argument I am putting now—he said that we needed to address age discrimination across all Commonwealth legislation. On tonight’s agenda, in fact, we have the Age Discrimination Bill 2003. That is the culmination of policy work which probably commenced back in the early 1990s and is concluding in the new millennium, but it will finally be addressed.

Senator Chris Evans—I hope Rolly Tasker lives long enough to see it.

Senator IAN CAMPBELL—Indeed, so do I. Another great Western Australian yachtsman, Noel Robins, who sadly passed away on 22 May this year, served Australia very well on the board of that museum—in fact served past his 65th birthday. I say quite frankly that I empathise with the sense of frustration Senator Greig would have on hearing a government minister saying that if you want to address this form of discrimination it is better to do it comprehensively. I think Senator Evans and I would agree on that. Senator Greig will say, ‘That’s the gov-
ernment fobbing us off.’ I have a set of words to read into *Hansard* which have formed part of the government’s official briefing on this. It says that the government does not consider it appropriate to adopt the amendments proposed in the context of this bill, as it would be an ad hoc and—to repeat myself—overly simplistic approach to a very serious and important issue and that a detailed consideration of all defence legislation would be a preferred approach.

That is probably something that Senator Greig would agree with. If I am going to see him on cue, he will probably jump up and say, ‘When is this detailed consideration and review going to take place?’ I certainly cannot give him that commitment at the moment, but I think the reality is that even he would agree that that is a preferred approach. He will regard this contribution as a fobbing off, but he at least has an invitation from the government to now say to us, ‘When is this detailed consideration going to occur?’ I am sure that Senator Hill, as a result of this, will have to deal with that in his own way.

I think all Australians would want to be assured that the Australian Defence Force pays more than lip-service to its commitment to promote equity, diversity and non-discriminatory practices in its unique workplace. The Defence Force will tell us in its publicity and its public relations that it is committed to these principles for high-minded reasons—for fine reasons like that. But it will also tell us that implementing policies and a culture of equity, diversity and non-discrimination are in fact good for its own practical and sensible reasons. Those reasons are encouraging retention, increasing effectiveness, building a cohesive work force and maintaining high morale.

I have had in my career as a senator—both as an opposition member and in the government—alarming cases brought before me that lead me to think that, in some cases at least, that is not the approach taken in the Australian Defence Force. I think it is very important that the defence forces get a very clear message from the parliament that we value their commitment to the promotion of equity, diversity and non-discrimination practices in that very important work force. I think they know that, when breaches of that commitment occur, they are quite often brought before us as members of parliament. I find it quite disturbing when I see them.

I think that the defence forces need to work harder and harder to have processes in place that ensure that people who feel that their rights have not been properly looked after and respected have redress and that the commitment made by the Defence Force to promote this culture is not being implemented in all cases. There is a huge responsibility on the leadership of the Australian Defence Force to ensure that that occurs. The responsibility on the government—and I think Senator Greig very articulately set this case out in reading out his correspondence with the leadership of the Australian defence forces—is to ensure that the legislative framework gives the defence forces the tools they need to achieve that. So we have challenges before us. I appreciate the constructive contribution of Senator Evans. I hope that I have dealt with Senator Greig’s amendments in the best manner possible to me.

**Senator Greig (Western Australia)**

(9.11 p.m.)—I want to make a few comments in closing. Firstly, I welcome Senator Evans’s contributions and comments, and I thank him for them. I understand the difficult position he is in, but I note that some of the comments he made here tonight were some of the strongest in terms of promised ALP reform in this area. There will be many in the community who find that encouraging. Hav-
ing said that, there will be many in the community who have heard those promises before. There were opportunities during the 13 years of Labor governments to address some of this, and that was not done. I am cognisant also of the fact that, at the time when I think Senator Robert Ray was Minister for Defence in 1992, by regulation, not legislation, the ban on gay and lesbian people serving in the military was lifted. There was a cabinet commitment to the community to also introduce an integration scheme, and an education and equity program to help facilitate that scheme, but it was never delivered. My concern and my fear is that the failure of that follow-through is in part the reason we struggle with this discrimination in the ADF today.

Senator Evans also made the point that only a Labor government would reform this area comprehensively and that the election of a Labor government is perhaps what the lesbian and gay community should aspire to. I think it is dangerous to assume that a future Labor government, were that to happen, would have a user-friendly Senate. There is no guarantee of that. We may find, given the finely balanced numbers in this place, that a Labor government would have a conservative Senate, in which case the window of opportunity would be lost. That is why I believe that, even from a position of not being in power, you should seize opportunities from the crossbenches when they arise. I consider this to be one of them. In saying that, Senator Evans seems to be of the belief—he can correct me if I am misinterpreting him—that, if you like, social reform of this scale is top down; it comes from the parliament. I have never believed that and I have never seen any evidence to support it. Social movements are always grassroots movements, and they are bottom up. They come from the community. It is through debate, education, advocacy, protest, rally and discussion such as we are having now that our community is educated to the point where political parties no longer fear reform that was once controversial. That is, in part, what I am on about.

Senator Evans, I do not know if you meant it unkindly, but I take exception to being labelled a ‘one-issue senator’ or a ‘one-agenda senator’, as I think you said earlier. I accept that I go on about these issues more than anyone else in this place. But I am the only one who does. If it were not for me, I doubt that anyone else would as quickly or as comprehensively step in. The fact is—and I encourage you to pore over the Hansard from the last 48 hours—that I speak on many more topics, but it is only this one that attracts media. I do not do that for media; it so happens that the media finds this sexy. That is a catch-22 situation for me, but I do not apologise for it, because when I came into this place I knew that I would never relinquish or turn on the very community who assisted me to be here.

If Senator Evans and his party are serious about trying to win the support of what might loosely be called the ‘human rights community’—or, more generally, gay and lesbian people—and they are serious about these issues, then they need to address and explain this nexus. For instance, they insist, as was shown in the co-contributions bill, on same sex couple amendments to a bill that they oppose, but they will not insist on same sex couple amendments to a bill that they support. You can understand why many in the community might be cynical about that. Finally, I would say to Senator Evans that there was nothing malicious in the delay or the very late distribution of the amendments to him. I was not responsible for that. I regret that it happened.

I learnt recently that Mr Danby in the other place has for some weeks now been
circulating a petition in his electorate of Melbourne Ports. He has been getting people in his electorate—an electorate with a high percentage of gay and lesbian people—to sign up to his petition and his campaign for Commonwealth reform in the defence forces to bring about equity. I do not have a copy of the petition, so I do not know the precise wording. I think perhaps that it relates more directly to Edward Young and the UN. Nevertheless, it is a strong indication from a Labor member out there on the ground in the electorate advocating in this area. So Senator Bartlett and I did not think it was remotely unreasonable to introduce these amendments or that Labor would be surprised by them.

I was offended yesterday when you described the amendments as a stunt, because they are not. We are serious about them. We mean them to be taken seriously, and I really believe—and perhaps Labor now does too—that the community is largely behind this. Community and social attitudes have changed hugely, particularly in the last four or five years. These issues are no longer seen as fringe but as quite mainstream. My experience is that the only real surprise and shock to most people, on learning about the existence of the discrimination, is that the discrimination is there. Most people, because they have seen reform at a state level, think that everything is hunky-dory—and it ain’t. The Commonwealth has fallen far behind the states and comparable international jurisdictions.

I will just make a few points to the minister. Firstly, we had an urgency motion in the Senate yesterday about the necessity for affordable housing. Speaker after speaker from the coalition side got up and argued that you were doing everything you could to make sure that people had access to affordable housing. Here is one policy where you are actively preventing, deterring and hindering people from affordable housing, and it is a nonsense to argue that there is any merit in that policy. The minister posed the question rhetorically, but I will pick it up—and he is right—that whole-of-government, comprehensive reform in this area would be a valuable thing. But, clearly, the government is not going to do that. We know that from a range of speakers we have heard on a variety of topics over recent days, whether it is from Minister Coonan on superannuation or, more recently, from Senator Abetz, ironically, on parliamentary travel. I understand Minister Abetz has put out a press release today saying that there is no discrimination in parliamentary travel. I assure him there is.

Finally, both the minister and Senator Evans have tonight said that a whole-of-government, comprehensive approach is needed. Senator Evans spoke of an audit of some sort. I will ask rhetorically, for the fourth or fifth time in this place, why then can we not bring on for full debate the Democrats’ Sexuality and Gender Identity Discrimination Bill 2003, which I reintroduced, having revamped it, only the other day. We could have a serious and full debate on that and bring it to a vote. I know that it would not survive the House of Representatives, but that is not the point. The point is to advance the debate and for parties in this place to wear their hearts on their sleeves and show where their votes lie in what will be an election year. All things being equal, I hope that that bill, rather than coming on for debate and a vote, which is unlikely, will instead go to the Legal and Constitutional Affairs References Committee. That will provide Senator Evans and his colleagues with the opportunity to engage in a broader discussion and to put in their submissions as to whether the bill that we are proposing is adequate and, if not, to advance their views.

What I am very anxious to see in facilitating this debate, at least on this level, is for each of the parties, whether it be the coali-
tion, Democrats, Greens, ALP or Independent, to have a clear, unambiguous policy in this area going to the next election—not a policy which says we will have an audit—that is pretty glib—but a policy which says, ‘These are quite specifically the areas that we understand are problematic and will seek to reform,’ and that Defence is just one of them.

But tonight we are dealing with a quarantined issue. It is a simple issue. It is inexpensive, it can be done, it should be done and—as I have articulated in reading the letter into Hansard from the Human Rights and Equal Opportunity Commission—it ought to be done, not just because it is right but because the discrimination on this very specific issue has already been found against by HREOC and we should adhere to that.

Senator BROWN (Tasmania) (9.20 p.m.)—Senator Greig has said it all. He has said it very cogently and put extremely powerful arguments for the passing of the Democrat amendments to the Defence Legislation Amendment Bill 2003. I cannot understand why the opposition is not supporting this. I think that the argument that Senator Greig put is very powerful—

Senator Chris Evans—We are supporting them. You should pay attention. You should sit down while you are in front.

Senator BROWN—We will see. I cannot see why the government is not supporting it as well. Obviously, you have a series of amendments which speak for themselves, which should be supported and which should be incorporated into law.

Senator CHRIS EVANS (Western Australia) (9.21 p.m.)—I do not want to engage in a debate with Senator Greig about peripheral issues and what he thinks the ALP should or should not do, but for his sake I want to place on record that the reason Labor are adopting the approach we are adopting is that we have given a commitment to the veteran community that we will pass this bill this session, and we will pass this bill this session. That is a commitment we are going to honour.

When confronted with these amendments, I was happy to give them support to shine the light on the government’s failure to deal with this discrimination and to express the attitude of this chamber about that. But we all know how this place works and what happens with the government. The point I made earlier was not about what a Labor government would do. What we need is a government to commit to antidiscrimination; it could be a government of any form. I would be happy if the current government took on that task. I was making the point that in the end these issues only get dealt with by a government that is prepared to tackle them and that what we do in this chamber in trying to amend legislation is only going to be nibbling away at the edges. The point I want to make and reiterate is that Labor will pass the bill. We will support the amendments. But, if the government asks that the amendments not be insisted upon on bringing the bill back, then we will vote for the bill.

Question agreed to.

Senator GREIG (Western Australia) (9.23 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 3241:

1) Clause 2, page 2 (table item 8, column 1), after “26”, insert “, 26A, 26B, 26C, 26D, 26E, 26F”

2) Schedule 2, page 19 (after line 19), after item 26, insert:

26A Section 3 (after line 19), after item 26, insert:

Insert:

*interdependency relationship* means a relationship between 2 persons that is acknowledged by both and that involves;
I will not speak to these amendments for long. I understand that they are essentially self-explanatory. They complement the amendments just passed, but in terms of their definitional process they go more to the heart of the wording of ‘interdependency’, which we debated at some length on the superannuation co-contributions bill previously and which had the support of this chamber.

Senator BROWN (Tasmania) (9.24 p.m.)—We also support these amendments. I just want to make the point that to support amendments but not insist upon them is to negate the support. I am referring to the Labor Party, which is saying it is going to support the amendments but not insist upon them. The sentiment is right, but the outcome is going to be zero.

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

Third Reading
Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.26 p.m.)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

BUSINESS
Rearrangement
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.27 p.m.)—I move:
That intervening business be postponed till after consideration of government business order of the day No. 4 (Family Law Amendment Bill 2003).
Question agreed to.

FAMILY LAW AMENDMENT BILL 2003
Second Reading
Debate resumed from 20 August, on motion by Senator Alston:
That this bill be now read a second time.
Senator LUDWIG (Queensland) (9.27 p.m.)—I rise to speak on the Family Law Amendment Bill 2003. This is an omnibus bill which makes a number of amendments to the Family Law Act 1975 dealing with parenting plans, the conduct of proceedings in the Family Court and the management of the court, the parenting compliance regime, financial agreements, orders binding third parties, the costs of child representatives and the protection of children from abuse. In the main, the opposition supports the measures in this bill subject to two matters that were highlighted in the inquiry of the Senate Legal and Constitutional Affairs Legislation Com-
mittee into the bill, which I also participated in.

Schedule 1 to the bill will remove the possibility of registering a parenting payment with the Family Court or Federal Magistrates Court. Parenting plans were introduced by the Family Law Reform Act 1995. Once registered, the child welfare provisions in the plan are enforceable. Child welfare provisions are those dealing with the persons with whom a child is to live, contact between a child and other persons, and any other aspect of parental responsibility for a child except child maintenance or support. Parenting plans replace child agreements in the Family Law Act. The key difference between the two was that child agreements could be registered as of right by parents with no judicial scrutiny, whereas parenting plans can only be registered if sanctioned by the Family Court after the parents have provided detailed information and a certificate by a lawyer or a family and child counsellor.

Parenting plans were designed to promote a cooperative approach to parenting after separation and to overcome a tendency of some parents to think of themselves as winners or losers in the custody battle. In 1997 the Family Law Council and the National Alternative Dispute Resolution Advisory Committee recommended that the 1995 provisions governing registration of parenting plans be repealed. I understand that the Attorney-General was then of the view that they should remain in place until a general review of the 1995 amendments was conducted. However, in 2000 the council and the committee repeated their advice, which was ultimately accepted by the Attorney-General.

The recommendations of the council and the committee were based on the following considerations: registered parenting plans are inflexible and can only be varied by registering a new agreement revoking the old one; the process for registering parenting plans is cumbersome and expensive; it has proved confusing to make some parts of a parenting plan legally binding while others remain legally non-binding; family lawyers have made minimal use of parenting plans and instead have sought consent orders to achieve the same outcome; and, finally, the alternative to seeking consent orders should be simpler, clearer and more flexible. Following these amendments, the Family Law Act would continue to encourage the use of parenting plans as informal, legally non-binding agreements.

Several groups expressed concerns to the Senate committee about these amendments. In essence, they were worried that the bill would deprive families of a simple alternative to seeking court orders and that the absence of scrutiny would increase the risk of parents entering into unworkable plans. The opposition acknowledge these concerns, but on balance we are satisfied that these amendments are appropriate. The evidence suggests that the parenting plan provisions have not operated as originally intended. The Family Law Act will continue to encourage the use of parenting plans as an informal mechanism and parents will be able to continue to seek consent orders to create enforceable obligations.

Schedules 2 and 3 of the bill relate to the conduct of proceedings in the Family Court and the management of the court, and they are supported. While these amendments are uncontroversial, this is an appropriate point to observe that the Attorney-General appears to have decided to further run down the capacity of the Family Court by not reappointing judges in Adelaide and Melbourne. The pressure on these Family Court registries is apparent from the figures provided through Senate estimates which indicate that, while the Family Court nationally manages to finalise 75 per cent of matters within just
over 20 months, in Melbourne it takes 22 months and in Adelaide it takes more than 26 months. The Attorney-General’s decision, coming on top of cuts to the Family Court in previous years, does nothing to improve the position of separating families left waiting in Adelaide and Melbourne Family Court registries.

Schedule 4 of the bill proposes minor changes to the three-stage regime for enforcement of parenting orders introduced by the Family Law Amendment Act 2000, which came into effect on 27 December 2000. We acknowledge that the changes are essentially designed to provide the court with greater flexibility to manage the compliance regime, and they are supported. For example, the court would be empowered to order that a person attend a post-separation parenting program at any stage during proceedings for a parenting order rather than simply after an alleged breach of a parenting order. The court would also be empowered to order that a person attend a post-separation parenting program provider for an assessment as to the person’s suitability to attend a program. We understand this function has been difficult to discharge in practice, as you can imagine, given the need to maintain an up-to-date and meaningful list of all programs offered by different providers.

The bill also confers powers on the court to make additional orders at various stages of the enforcement regime, including a further parenting order that compensates for residence forgone because of a contravention of an earlier order, an order varying the order alleged to have been contravened—for example, where a person is able to establish it was unreasonable or impossible to comply with that order—and an order imposing a different penalty if a person contravenes a community service order.

The bill also clarifies that the enforcement regime applies only to orders and undertakings on parenting matters, not to those that relate solely to financial matters, and applies only where no other court has dealt with or is dealing with a contravention of a particular order—in substance, a rule of double jeopardy.

Schedule 5 proposes two changes to the regime for binding financial agreements, also introduced by the Family Law Amendment Act 2000. The opposition supported this regime, with amendments recommended by a Senate committee and accepted by the government. Labor’s approach was to ensure that the institutionally weaker party—often the woman—is not disadvantaged by a binding financial agreement. The first change is that the court would be empowered to make a maintenance order that overrides the effect of a financial agreement if the circumstances of a party at the time the financial agreement came into effect rendered them dependent on government income support. Currently this power refers to the circumstances of the party at the time the financial agreement was made. The change makes logical sense as the court, when considering whether to make a maintenance order, will be more concerned with the circumstances of the party during the period the financial agreement has effect.

The opposition acknowledge the concerns expressed to the Senate committee that this change would apply to existing as well as to future financial agreements. However, in the circumstances, we accept that this is appropriate and will benefit disadvantaged parties who have found themselves relying on government income support as a result of inadequate provision for maintenance in a financial agreement.
The second change contained in schedule 5 is that a financial agreement will be binding if each party has been provided with independent legal advice on ‘advantages and disadvantages at the time that the advice was provided to the party making the agreement’. This requirement replaces the existing requirements to be provided with advice from a legal practitioner on ‘whether or not at the time when the advice was provided, it was to the advantage, financial or otherwise, of that party to make the agreement’ and ‘whether or not at that time it was prudent for that party to make the agreement’ and ‘whether or not at that time and in the light of such circumstances as were at that time reasonably foreseeable, the provisions of the agreement were fair and reasonable’.

We understand the change responds to concerns expressed by the legal profession that it was being required to provide financial advice based on uncertain future matters. We agree it is undesirable that legal practitioners be mandated to provide such financial advice which can give parties a false sense of security that it is soundly based. The amendment is therefore supported.

I turn now to schedule 6 of this omnibus bill. As one can see by the disparate elements that comprise it, this bill deals with a whole raft of issues. Schedule 6 is another area that would empower the court to make orders and injunctions binding third parties. The court could do so either when making orders altering property interests as part of a property settlement, or when exercising its more general power to issue orders or injunctions relating to the protection of parties to a marriage. The term ‘third parties’ is defined broadly and would include friends or relatives of the parties to the marriage, businesses and financial institutions. 'Marriage' is also defined broadly to include void and dissolved marriages. The provision would not apply to marriages where there is a current order or financial agreement relating to the property of the marriage.

The types of orders the court could make as part of a property settlement would include an order directed to a creditor of one or both parties to the marriage varying the liability for the debt by either substituting one party for another or varying the proportionate liability of each party, or an order directed to a company or a director of a company to register a transfer of shares from one party of a marriage to the other. The types of orders the court could make in exercise of its more general powers would include an order restraining a person from repossessing property of a party to a marriage, or restraining a person from commencing legal proceedings against a party to a marriage. The court could only make such an order if it is reasonably necessary or reasonably appropriate or adapted to effect a division of property. If the order concerned a debt, the court would have to be satisfied that the order would not result in non-payment of the debt. Third parties would be provided with an immunity against loss or damage because of acts done in good faith and in reliance on an order. An order would prevail over any contrary obligation in any other law or legal instrument.

These amendments would significantly expand the powers of the Family Court and Federal Magistrates Court to effect a division of property and protect parties to a marriage. This expansion of powers is counterbalanced with measures to protect the substantive and procedural rights of third parties and, on this basis, Labor supports them. However, it became clear during the Senate committee inquiry that the government’s consultations on these measures had been less than adequate. That reminds me, as I think I mentioned in the debate on a previous bill tonight, that the consultation by the Attorney-General has
been inadequate. Although this was not one of the areas I had in mind at the time—there were two instances in another area—it is another area where the Attorney-General’s Department needs to heed its own advice in respect of ensuring that it can consult widely and more generally in relation to its bills.

Some further work was required to ensure that any consequential amendments that may be required are in place. The Senate committee recommended that the commencement of these provisions be deferred to enable this further work to be carried out. We are pleased, however, that the government has responded positively to this recommendation and to the concerns expressed to the Senate committee and that it will be moving amendments at the committee stage.

Schedule 7 contains a number of miscellaneous amendments. I will restrict my comments to only two of those issues, the first of which is child protection. Currently the Family Law Act makes inadmissible in court anything said by a party during family and child counselling or mediation; conferences with family and child counsellors or welfare officers; and post-separation parenting plans. Schedule 7 would create an exception to this rule and allow as evidence an admission or disclosure of an adult or a child that indicates that a child has been abused or is at risk of abuse. Under the exception, the evidence would be admissible unless the court were satisfied that sufficient evidence of the admission or disclosure was available from other sources. The exception would not apply to disclosures by an adult of abuse by another person, nor to disclosures by a child of abuse of another child. These amendments were recommended by the Family Law Council in its September 2002 Family Law and Child Protection report and seek to balance the traditional public interest in the confidentiality of family counselling and mediation with heightened community concern to ensure that children are protected against abuse. The opposition welcomes and supports these changes. The opposition also welcomes the fact that the Standing Committee of Attorneys-General has established a working group to consider other recommendations of the Family Law Council that are designed to enable separating families to have all their family law and child protection issues dealt with in the one court.

The second matter about which the opposition has been concerned is the proposal in the bill to require the Family Court to order that each party to the proceedings must bear the costs of a child representative in the proceedings, unless a party receives legal aid funding or would suffer financial hardship. Legal aid guidelines introduced by the Howard government require child representatives to seek such a costs order, although in many cases the Family Court has refused to exercise its discretion to make one. This amendment would inevitably change the way the Family Court considers these applications and would result in more costs orders being made. This measure drew the most criticism during the Senate committee inquiry. It was submitted that it could make it harder for separating parents to reach full agreement and could make them more antagonistic towards the appointment of child representatives. It was also thought that it could prolong litigation as separating parents disputed the amount of the costs and the proportion they should be required to pay.

We acknowledge that more child representatives have been appointed since the full Family Court’s decision in Re K and that this has meant a greater call on legal aid resources. But we have questioned whether there are better ways for the Commonwealth government to save money than to force the Family Court to make costs orders against separating parents in a way that may end up harming the interests of their children in
family law proceedings. Again, the Senate committee recommended that this part of the bill not proceed, and the government has responded with amendments which I will address at the committee stage—hopefully, this evening.

In conclusion, subject to the two matters I have outlined, the opposition supports this bill and the continuing reform of the family law system in the interests of families coping with separation. By and large this reform has been undertaken by governments of both political persuasions in a cooperative and bipartisan spirit, which is desirable when dealing with the difficult and emotive issues involved in family separation. It is to be hoped that this approach will continue following the current inquiry being carried out by the House of Representatives Standing Committee on Family and Community Affairs.

Senator GREIG (Western Australia) (9.44 p.m.)—The Family Law Amendment Bill 2003 will make significant improvements to the system of family law in this country, and we Democrats welcome its introduction. While there are some aspects of the bill with which we disagree and which we will seek to amend, we nevertheless support the thrust of the bill. The bill will implement a number of the recommendations made by the Family Law Pathways Advisory Group in its report, Out of the maze: pathways to the future for families experiencing separation, which was released in August 2001. It is always important to remember that, when we talk about family law, we are talking about a system which deals with families experiencing breakdown. It is a system which people are forced to negotiate at a time when they find themselves in the most traumatic of circumstances. Of course, it is also a system which is responsible for making vital decisions regarding the welfare of Australian children. For all of these reasons, it is imperative that our family law system operates smoothly and efficiently and that every step is taken to minimise the trauma to those experiencing family breakdown.

There are a number of measures contained in the bill which are designed to achieve just that. For example, the Democrats welcome the provisions in this bill which will enable disclosures of abuse that are made during counselling or mediation to be presented in evidence before the court. Although it is important for parties involved in counselling or mediation to have confidence that what they say will be confined to the counselling or mediation session, the Democrats agree that there is an overriding policy consideration when it comes to disclosures of abuse. Such evidence will help to ensure that the court’s decision takes into account any concerns for the safety of victims of abuse. Safety concerns must be pre-eminent in consideration when making orders for the custody of children and other practical arrangements.

The Democrats also welcome the clarification regarding the use of audio and video links in the Family Court. The use of these technologies for the provision of evidence is, of course, particularly important in cases involving abuse. Clearly, the prospect of facing a violent or abusive partner or parent in the court is likely to exacerbate the trauma experienced by a victim of domestic violence. By enabling that person to provide evidence via a video or audio link, the court helps to minimise their trauma and enables them to speak more freely about their experiences. But this is not just about minimising the trauma experienced by individuals; it is also about improving the quality of justice within the family law system. By facilitating a free and frank account of the circumstances leading to the family breakdown, the court is better equipped to make the most appropriate and just decision in the circumstances of each case. Of course, any evidence of abuse
will be a crucial factor in the court’s decision, and it is imperative that victims of such abuse feel confident and safe to provide their evidence to the court.

This brings me to the second reading amendment which has been circulated by the Democrats. We have long been concerned about the trauma often experienced by the victims of child abuse in Australian courts—not just in the Family Court but also, and perhaps more so, in the criminal justice system. When allegations of child sex abuse are prosecuted, victims are often required to describe their experience in detail—not just when reporting the offence but also at the committal hearing, during the trial and many times in between, as they prepare for trial. Some victims are required to face their alleged offender in court or give evidence knowing that they are seated just behind a nearby screen, as technical difficulties and lack of facilities prevent them from giving evidence via closed circuit television. And, of course, the cross-examination in criminal proceedings is invariably vigorous. The rule in Brown v. Dunne, while fundamentally important to protect the presumption of innocence, nevertheless contributes to the trauma experienced by victims of abuse.

If the defence case is that the allegations are false, this must be put to the victim. In other words, defence counsel must put it to the victim that they are lying, that they are concocting stories and that they are playing with the truth. There have been disturbing reports of young children being brought to tears by strings of these accusations being put to them repeatedly. This is quite the opposite approach to what is advocated when it comes to reporting child sex abuse. There have been a number of campaigns over recent years about the importance of believing the victims of child sex abuse when they come forward to tell their stories. How ironic that, as a community, we think that it is important to believe the victims of child sex abuse when they initially report their stories, and yet we accuse them of lying when they get to court. One of the purposes of the criminal justice system is to deter offenders and potential offenders from committing these crimes. Unfortunately, our justice system seems to be more effective in deterring victims from reporting sexual abuse offences in the first place.

We Democrats believe that this is an issue on which the Commonwealth government must demonstrate leadership. The Commonwealth has shown that, when it takes leadership on important national issues, it can work effectively with the states to ensure a unified national response. For example, we saw this with the initial gun law reforms and the buy-back scheme following the Port Arthur massacre. Unfortunately, the government has not been quite as successful in relation to hand gun restrictions. Child sex abuse is a national issue, and it requires a national response. It particularly requires a national response because, at the moment, children in different states have very different levels of protection in the respective criminal justice systems. The Democrats take this opportunity to call on the federal government to raise this issue at the next COAG meeting and start working towards a national response to minimise the trauma experienced by the victims of child sex abuse.

I now formally move the second reading amendment of the Democrats, and I commend it to the Senate. I move:

At the end of the motion, add:

“and the Senate:
(a) commends the Government for the measures contained in this Bill to minimise the trauma for children who provide evidence in the Family Court regarding their experience of abuse, particularly the power of the Family
Court to take evidence by audio and video link;

(b) expresses concern that children who are the victims of abuse also experience trauma when providing evidence in criminal proceedings against those who have abused them and that, in these circumstances, the trauma is often exacerbated through strenuous cross-examination and the requirement to provide evidence at committal proceedings in addition to the criminal trial;

(c) notes that while most State jurisdictions have access to closed circuit television systems, evidence indicates that these systems are not always used to facilitate the giving of evidence by victims of child sex abuse;

(d) expresses concern that children in some States are more likely to experience a higher level of trauma when giving evidence regarding abuse than children in other States, given the different arrangements which apply from State to State;

(e) notes evidence which indicates that the trauma experienced by victims of child sex abuse may deter them from reporting such abuse and may therefore prevent the perpetrators of such abuse from being brought to justice;

(f) calls on the Government to provide leadership on this issue and to work with the States through the Council of Australian Governments to put in place uniform national arrangements designed to minimise the trauma experienced by victims of child abuse in the criminal justice system”.

Getting back to the provisions of the bill, the Democrats do have a number of concerns which we will be seeking to address by way of amendment—for example, the requirement that parties bear the costs of the child representative in addition to their own costs.

The government has sought to limit this obligation in circumstances where a party is in receipt of legal aid funding or would suffer financial hardship if required to pay for the child representative. However, the Democrats are concerned that introducing such a requirement may result in parents opposing the appointment of a child representative or engaging insufficiently qualified representatives. For these reasons, the Democrats believe that the provisions may be contrary to the best interests of the child. We note that the Senate Legal and Constitutional Legislation Committee also expressed concerns regarding these provisions; however, the government’s new amendments do not appear to fully address those concerns.

The Democrats firmly believe that the government has a responsibility to ensure that the interests of Australian children are protected. This includes meeting the costs associated with protecting the interests of children. It is fundamental that children in families which are experiencing breakdown have access to qualified, competent, independent representatives to represent their interests before the court. We cannot risk their interests being compromised by sub-standard representatives. Accordingly, the Democrats will be moving amendments to oppose the changes to the costs of child representatives.

We believe the government has failed Australian children one too many times. What is even more disturbing is that it is usually the most vulnerable children who suffer as a result of government policy—the children who have been abused, the children who are experiencing family breakdown and the children who have fled from persecution in their home countries. The government has failed to establish a royal commission to inquire into child abuse, it has failed to appoint a commissioner for children and it continues to lock children in remote detention centres.
While the government may refer to the significant costs associated with child representatives, it appears to have no problem paying large sums of money to its lawyers to go to the High Court and argue that children who have fled from persecution should be locked up in detention centres.

We know that the government currently has access to a very substantial surplus from which it could meet the costs of child representatives. Even if it were to face difficulty in meeting these costs, the Democrats argue that this is because it has got its priorities wrong. We say to the government: take the children out of detention centres, stop wasting money arguing that they should stay there, abandon the incredibly expensive—note to mention inhumane—Pacific solution and use the money to fund qualified child representatives to protect the interests of vulnerable children.

Another concern we have in relation to this bill is the proposed removal of the option of registering parenting plans. Although we realise that the use of registered parenting plans is minimal, they nevertheless provide parents with a cheaper, legally binding alternative to obtaining consent orders from the court. Women’s groups have also made the point that maintaining the option of registering parenting plans will provide greater protection for the interests of women, particularly more vulnerable women. There is evidence to suggest that unregistered parenting plans are more likely to facilitate coercion by dominant partners, especially in relationships involving violence.

The Democrats believe that the family law system must be as flexible as possible in order to cater for a wide range of circumstances. We believe that families experiencing separation should have a range of options to sort out their affairs and make arrangements for their future. We are not persuaded by the government’s arguments in favour of abandoning registered parenting plans. On the contrary, we believe there are compelling reasons to retain the option of registration. Accordingly, we will be moving amendments to oppose the removal of registered parenting plans.

We will also be moving amendments to oppose the retrospective commencement of the provisions regarding financial agreements. The bill will insert a new part dealing with prenuptial and other financial agreements intended to govern the distribution of resources following separation. The new provisions will enable the court to make a maintenance order notwithstanding such an agreement if at the time the agreement comes into effect—rather than when it was made—a party is reliant on government income support. This is intended to guard against ‘sweetheart deals’ between parties aimed at maximising government allowances and minimising maintenance obligations.

The Democrats support the introduction of these new provisions. However, we do not support their retrospective commencement. We note, for example, the concerns expressed by the Law Council of Australia. In its submission to the Senate Legal and Constitutional Legislation Committee, it argued that regard should be given to the intention of the parties when they entered into the agreement. The Democrats take the view that the parliament should not retrospectively alter the rights and liabilities of individuals, other than in the most exceptional circumstances. While the new provisions are meritorious, they do not address any exceptional circumstances and therefore we do not believe that they should commence retrospectively.

Finally, the bill will change the requirements associated with obtaining independent legal advice in relation to financial agree-
ments. The Democrats have previously argued strongly in favour of the need for independent legal advice in relation to such agreements. Given the potential effect that these agreements will have on the rights, liabilities and interests of the parties, we believe it is imperative that comprehensive advice is obtained before entering into them. While the bill maintains a requirement to obtain independent legal advice, it removes some of the matters in relation to which advice must be obtained. The Democrats believe it is preferable for these matters to be set out in the legislation in full. We are aware of the concerns of legal practitioners in relation to the liability associated with providing such service. However, in this instance we believe the overriding consideration must be to protect the interests of the parties to the agreement. Subject to the concerns I have outlined, the Democrats support this bill and welcome its introduction to the Senate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.56 p.m.)—I thank senators for their contribution to the debate on the Family Law Amendment Bill 2003, another important bill in the progress of the Family Law Act of Australia. The amendments in this bill simplify and better integrate the family law system. The provisions in schedule 6 of this bill are particularly significant. They give courts exercising jurisdiction under the Family Law Act the power to make orders binding on third parties when dealing with property settlement proceedings. The provisions make it clear that, within defined limits, courts will have power to direct a third party to do something in relation to the property of a party to the marriage. The schedule provides for procedural rights to be given to third parties to ensure that the changes do not affect the underlying substantive property rights of the creditor. Consultations have occurred with the banking and financial services sectors in relation to schedule 6, and amendments will be moved by the government in response to the concerns expressed.

A number of the amendments in the bill clarify and refine amendments made by the Family Law Amendment Act 2000. In particular, the amendments improve the operation of the provisions in the Family Law Act relating to the parenting compliance regime for the enforcement of parenting orders. The enforcement of parenting orders is an area of significant public concern. These amendments will improve flexibility for clients, the court and post-separation parenting program providers.

In addition, the improvements in the bill to the operation of the financial agreement provisions in the Family Law Act will assist parties who are seeking to resolve property matters after separation without resorting to litigation. Financial agreements were introduced by the government in the 2000 amendment act and allow people to have greater control and choice over their own affairs in the event of a marital breakdown.

The bill will allow admissions by adults and disclosures by children made in counseling and mediation sessions under the Family Law Act that indicate that a child has been abused or is at risk of abuse to be admitted as evidence. Such evidence will be admissible unless the court is of the opinion that there is sufficient evidence of the admission or disclosure available to the court from other sources. The amendment implements recommendations of the Family Law Council in its September 2002 report on family law and child protection. The reforms in the bill are consistent with the report of the Family Law Pathways Advisory Group, Out of the maze: pathways to the future for families experiencing separation.

The government is committed to the ongoing reform of the family law system. The
family law system needs to be sufficiently flexible to respond to changing needs but appropriately firm to ensure that processes are consistent and the law is clear. I can advise the Senate that the government intends to move 16 amendments to the bill. Ten of these will make changes to binding third-party provisions in schedule 6, and the remaining three amendments will make changes to the child representative cost provision in schedule 7 of the bill.

These amendments are a result of further consultations with a range of stakeholders. They are also a response to recommendations 1 and 2 of the Senate Legal and Constitutional Legislation Committee’s report on the provisions of the bill tabled on 13 August this year. The amendments aim to minimise the difficulties experienced by people, including children, after relationships have broken down. A number of points were raised by senators, and I refer to Senator Ludwig, who supported the government’s proposals set out in the bill. I thank the opposition for its support.

I note that Senator Ludwig was concerned about the government’s decision not to reappoint Family Court judges in Adelaide and Melbourne. I point out to the Senate that the government has decided to appoint federal magistrates in both cities instead. These appointments better reflect the type of work being done in these courts. The government remains committed to ensuring appropriate levels of resources to look after the Family Court and the Federal Magistrates Court. Senator Greig also made some comments. He supported the overall thrust of the government’s proposals. I recognise Senator Greig’s ongoing interest in these issues. This is an important amendment bill and, as I said, it is indicative of the government’s ongoing commitment to family law in Australia. It is flexible but also ensures that consistency prevails. I commend the bill to the Senate.

Question agreed to.

Order that consideration of the bill in Committee of the Whole be made an order of the day for the next day of sitting.

**BUSINESS**

**Rearrangement**

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.02 p.m.)—I move:

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

Question agreed to.

**AGE DISCRIMINATION BILL 2003**

**AGE DISCRIMINATION (CONSEQUENTIAL PROVISIONS) BILL 2003**

**Second Reading**

Debate resumed from 1 December, on motion by Senator Patterson:

That these bills be now read a second time.

(Quorum formed)

Senator LUDWIG (Queensland) (10.05 p.m.)—I rise to speak on the Age Discrimination Bill 2003 and it is an important occasion. The bill proposes to prohibit age discrimination, and much work has been undertaken by the Core Consultative Group on age discrimination reform. The work undertaken was in fact the blueprint for the bill. A range of organisations provided submissions: the Australian Nursing Federation, the Australian Chamber of Commerce and Industry, COTA National Seniors, the Human Rights and Equal Opportunity Commission and a number of other organisations. The bill received a short public hearing in Parliament
Provisions of the Age Discrimination Bill 2003 were considered by the committee, of which I was fortunate to be a member.

It is clear that there is a need for legislation prohibiting age discrimination. I have already addressed the area where the Commonwealth needs to consider this type of legislation in detail and give it far more importance than it has in the past. Age is a universal characteristic which in certain stages in our lives demands special treatment, recognition and sometimes protection. It is frequently said that how a nation treats its young and its elderly is an indication of how civilised it is. Many current stereotypes about age related characteristics are wrong, misconceived and hurtful. Notions of younger adults being irresponsible and older persons being inflexible, hard to train and not adaptive may be no reflection of reality and often deprive both industry and the individual of considerable opportunity. Our social and economic progress demand that the attitudes and myths that perpetuate negative effects of age discrimination be shattered. The government should lead in this task.

The substance of the Age Discrimination Bill 2003, albeit with some changes, is supported by the opposition. All states and territories have outlawed age discrimination. While the federal government is the last to act, we believe that in this instance it is better late than never. Law reform is a powerful tool that can do much to eliminate prejudices. It can reflect community aspirations that help to mould conduct so that those aspirations become standards. A generation ago, laws prohibiting discrimination on the grounds of sex, race and other ill-founded bases for discrimination wiped out many stereotypes that had largely been left unquestioned at the time. One only needs to look back over two decades to an era where certain jobs were reserved for males and others for females. As late as 1980, a woman by the name of Deborah Wardley was involved in a fight that went all the way to the High Court to be allowed to pilot a commercial aircraft. She won that fight. Right up until the 1980s, job advertisements were segregated into women and girls and men and boys. In the former category were positions such as secretaries, sales assistants and nurses and in the latter category were truck drivers, carpenters and managers.

The move to eradicate age discrimination has come more recently, and there is still much work to be done. Until relatively recently it was not uncommon for employers to set baseless age limitations for jobs. In our newspapers it was easy to find employers expressly stating in job advertisements that applicants be under 40 or 45 years of age. These sorts of limitations had no rational basis. They not only excluded worthy applicants but reinforced the message that age would dictate a person's ability to perform certain work, when such an assumption was nothing short of wrong and was destructive of individual and corporate talent.

Some of the stories found in the Human Rights and Equal Opportunity Commission's excellent report into age discrimination entitled Age matters tell of the existence of ageism in contemporary Australia. One person told the commission:

I was registered for unemployment and when I asked why no job had been referred I was told by a CES staff member that I was past my use-by date.

Later the report speaks of a male teacher who applied for a subject coordinator's position. He was asked why he did not seek the position 20 years earlier. In respect of accommodation, the report reproduced an extract from the Youth Affairs Network of Queensland which stated:

## CHAMBER
There is no legal reason that people under 18 years of age cannot sign a lease, however this is still cited as a reason for them not being leased flats, units and houses.

Age discrimination persists as a negative force that requires appropriate government attention and, as I have said, this is supported by the opposition. In November 2001, the Human Rights Commissioner, Dr Sev Ozdowski wrote:

Age discrimination complaints made to the Human Rights and Equal Opportunity Commission between 1999-2000 and 2000-2001 have tripled. More than 200 people phoned the complaints information line after being deemed “too old” for a position.

Under New South Wales laws, age discrimination was the most common ground for complaint in 2000-01 to the New South Wales Anti-Discrimination Board, making up nine per cent of complaints in total. Not only are views that promote age discrimination an affront to the dignity of older persons but also they impair the efficient functioning of the labour market. If we take it on a macro level, an ageing population has serious economic consequences for the Australian economy. Over the next 20-odd years, the growth in the Australian population of labour force age will be 14 per cent, but the number of people between 55 and 64 years of age is expected to increase by over 50 per cent. It seems, on those figures, that I will be one of those persons.

On an international scale, participation in the Australian labour market stands at a relatively high rate for young workers but at a low rate for older workers. The labour market is not serving older Australians particularly well. This is exemplified in the disappointing reality that Australia has the highest unemployment rate of any country in the OECD for men aged 55 to 59. These statistics bear out that the case for human rights goes beyond legal niceties. Human rights do more than achieve the noble objective of upholding the dignity of the individual. Respect for fundamental human rights pays significant economic and social dividends as well.

Recalling the comparison to sex discrimination, the rise in female participation in our labour force has been a significant contributor to our rising economic prosperity. Not only can women now fulfil their potential and their aspirations but also industry has an enlarged pool of skilled labour. The higher labour participation rate of women significantly boosts the gross domestic product of Australia. Demographers have charted how our growing life expectancy and declining birth rates are changing the population profile. As a nation, our average age is increasing. It is predicted that, between 2011 and 2031, the number of people aged over 65 in Australia will grow from three million to five million, and I seem to be headed to be one of those as well. Over this period, the number of persons over 85 years of age will almost double, to 1.1 million. Perhaps more dramatic than these figures is the slowdown in the rate of work force growth. Between 1978 and 1988, the work force grew by 23.5 per cent. In the succeeding decade, the rate fell to 17.1 per cent. Over the decade 2000-2010, the rate will dwindle to just 13.8 per cent. So, from 1978 to 2010, it will go from 23.5 per cent down to 13.8 per cent, which is by any comparison a significant decline.

These trends point to a significant shift in the ratio of those who work to those who are in retirement. This will put an increasing strain on the economy, and it will be necessary to find the resources to fund retirement incomes and to deliver wealth and fundamental services to other segments of the population. However, as pointed out in the bill’s explanatory memorandum, an increase of 10 percentage points in the work force participation rate of Australians aged 55 to
70 years would largely cancel out any negative effects of an ageing population. It is therefore in everyone’s interests to seek to increase labour force participation among older workers, not by way of necessity but by way of creating equal opportunities for senior Australians and for young workers.

Of the various means pointed towards this goal, such as retraining programs for older workers, altered retirement income policies and so on, it remains essential that we as a society break down those views that perpetuate age discrimination and promote a culture that effectively locks people out of those opportunities that benefit not only themselves but the nation as a whole. On this front, Labor welcomes federal age discrimination legislation. Just as complementary state, territory and federal antidiscrimination legislation in respect of sex, race, disability and other grounds already exists, the addition of federal legislative protections against age discrimination will signify the complete and comprehensive rejection of age discrimination by all Australian governments.

However, we believe there is some scope for the government to improve this bill, and the opposition will be moving amendments to effect those improvements. The first area where Labor believe this bill requires improvement is the dominant purpose test currently contained in the bill. Labor believe that the government’s choice to water down the test for whether particular conduct constitutes age discrimination, by requiring that age discrimination be the dominant reason for the conduct complained about, creates a legal loophole that will greatly reduce the effectiveness of the bill. The requirement that age discrimination be the dominant reason for the conduct complained about, creates a legal loophole that will greatly reduce the effectiveness of the bill. The requirement that age discrimination be the dominant reason for the conduct complained about, is a much harder test than that which applies under the various state and territory laws dealing with age discrimination. Generally in antidiscrimination laws the relevant test is met, even if the discriminatory action is only one of several reasons for the conduct that is the ground for the complaint.

This strong belief in a robust test for age discrimination means that Labor will be seeking to amend the bill so that the test for age discrimination is one in which age is one of the reasons, as opposed to the dominant reason, for the discrimination. Without a robust test, this legislation will be all form and no function. It will not be consistent with other legislation in other states and, in fact, will provide a weak test in comparison, a test that discrimination simply does not bow to half-hearted or uncommitted legislative action. That is the problem and that is the test that the government will enshrine in this bill if it continues with its position. The government’s reasons for the weaker test in the bill are not based on sound reasoning and, in fact, are at odds with the government’s rationale for bringing forward the legislation as a whole. We note that the case the government put to the people for introducing the legislation was as follows:

If the status quo is retained, older Australians and younger Australians would bear the cost of ongoing discrimination, suffering the effects of marginalisation, unemployment or underemployment, damage to self-esteem, reduced social participation and reduced access to goods and services. The community would also lose the benefits of diverse contributions to society by people of different age groups.

In weighing up the case for legislative reform in this area, the government reasoned:

The self-regulatory measures suggested in Option 2 are not appropriate for the problem of age discrimination as they do not provide an adequate remedy. Legislative mechanisms for providing protection against age discrimination would appear to be the optimum way of dealing with the problem.

Similarly, simply retaining the status quo, as suggested in Option 1, is not an appropriate option in this case. As noted above, there are gaps in the
existing coverage of Commonwealth, State and Territory laws which would not be rectified by simply retaining the status quo.

In both the quotes mentioned above, the government has advanced a compelling case for legislating to prohibit age discrimination at the Commonwealth level. Labor agrees with the argument advanced but is left asking: if the government believes in prohibiting age discrimination, why is it proposing such a weak test in this important piece of legislation? In the execution of the legislation, the government has softened unnecessarily the impact that it will make, by introducing a legal loophole big enough to drive the proverbial omnibus through.

There are several other areas where Labor believe that well-thought out amendments will greatly increase the effectiveness of this bill. Firstly, Labor hope that the government will accept our amendment that will extend the protection of this bill to relatives and associates. The prohibition of age discrimination to a person’s relatives and associates was considered by the government, but we understand that was rejected. The government’s information paper on the bill contained a passage that said it would be inappropriate. We fear that, in the rejection of this proposal, the government has regretfully been overly influenced by employer organisations, or at least certain employer organisations, without having regard to the broader interests of the community.

It is not difficult to envisage where discrimination on the basis of the age of a relative or an associate may arise—for example, an employment situation where an employer discriminates against an employee who cares for an aged relative because of an apprehension by the employer that the employee will need time off to attend to the needs of that relative. Clearly this sort of discrimination demands redress, and this bill is the instrument through which that legitimate redress should be sought.

Another situation might be that of a hotelier not allowing parents with young children to stay as guests because of the hotelier’s anticipation of unruly behaviour by children. Once again, parents deserve the protection of a law which would provide protection from discrimination on the basis of age. Labor’s amendments will ensure that this legislation delivers that protection.

Labor takes the view that the Commonwealth legislation should set the standards and not lower them. Merely providing the lowest standard of protection for Australians facing age discrimination is not good enough. Labor believes that the government’s capitulation in this area has weakened this legislation and weakened the protection that this important bill will deliver to Australian people.

Age based harassment is the other area in this legislation that we are concerned about. The government’s position on age based harassment mirrors its position on relatives and associates. The government raised the issue in its information paper but later succumbed to a special interest concern over the issue and declined to ban age based harassment in the legislation. Age based harassment is a real problem that must be stopped. No more should young apprentices and junior staff be bullied and treated in a demeaning manner, and no longer should older Australians be subject to derogatory taunts. Age harassment is bad for the victims, bad for business and bad for Australia. This legislation is our best chance to stamp out this serious problem. The Labor Party intend to take that chance. We are disappointed that the government is not prepared to embrace it.

With the three amendments which Labor are proposing, we believe the operation of the Commonwealth age discrimination legis-
lation will go from being perhaps the weakest in the land to being on a par with the best. As amended by those proposals, we consider that the proposed legislation will be better able to fulfil its mission, as stated by this government—one on which the government and the opposition agree—which is to protect Australians from negative age discrimination and promote a culture of utilising our nation’s best talent base irrespective of a person’s age.

On the issue of exemptions in this legislation, Labor will reserve our judgment until the operation of the legislation has been considered over time. We believe it is vital that the Human Rights and Equal Opportunity Commission have sufficient funding and resources to make that assessment on the operation of the legislation. The measures contained in this legislation, once they are operating effectively, will have undeniable social benefits but, just as importantly, they will also deliver sustained economic benefit to all Australians. It would be best to look more generally at the Human Rights and Equal Opportunity Commission’s independence and integrity and allow it to help ensure that this legislation delivers economic and social benefits to all Australians. However, until the government accepts this simple idea and gives up on its ideological pursuit of the commission, the protection provided by this legislation and the valuable contribution that the Human Rights and Equal Opportunity Commission can make to Australia is under threat.

With Labor’s package of amendments we believe the bill will become balanced, effective and should serve the purpose that it is designed to achieve. We are all susceptible to the effects of age, which, regrettably, we start to feel at this hour. That process is beyond our control. However, it is in our control to break down the stereotypes and prejudices that are associated with age. To strengthen our society and build our economy, merit must be rewarded, not age. With Labor’s amendments this legislation will do just that.

Senator GREIG (Western Australia) (10.25 p.m.)—On behalf of the Democrats I am very pleased to finally welcome the introduction of age discrimination legislation to the chamber: the Age Discrimination Bill 2003 and the Age Discrimination (Consequential Provisions) Bill 2003. The prohibition of discrimination on the basis of age has long been a glaring omission from Australia’s body of antidiscrimination law. All Australians have the right to freedom from discrimination on the basis of their age, and this right must be protected by law. Young Australians and older Australians—indeed, Australians of every age—must have the freedom to engage in the labour market, further their education, access goods and services and use facilities regardless of their age. This is a fundamental human rights issue which has been overlooked for a long time in Australia. Yet, in introducing this legislation, the government seems to have been more concerned about the economic benefits of non-discrimination than about protecting the right to freedom from discrimination.

The government is right to highlight some of the difficulties facing older Australians who wish to continue working. These difficulties have been identified in a range of studies that were consistently raised in evidence to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the bill. A study conducted by the Drake consulting group in 1999 revealed that not one of the top 500 human resource executives would take on new managers or executives who are in their fifties, and that this age group would be the first in line for retrenchment. It was evidence such as this which led Michael Cave to comment in the Financial Review on 26 July this year that ‘Australian business has become a bastion of age dis-
Diana Olsberg, an academic with the University of New South Wales Research Centre on Ageing and Retirement, argues that Australians have a tendency to confuse age with a lack of acuity and are overwhelmed with respect for newness, novelty and technology. She argues that we have not paid due respect to the wisdom that age brings.

These trends will have significant implications for the Australian community, given our ageing population—and, yes, they will have economic implications. As the ACTU and the Business Council of Australia have both pointed out, while there are currently six working Australians supporting each retired person, by 2025 this ratio will be one to three. The Democrats welcome the economic benefits that will flow from this legislation, but these benefits should only ever be seen as a by-product of long-overdue, remedial legislation to prohibit age discrimination in this nation. Economic benefits should never constitute the primary motivating factor for introducing human rights legislation. Perhaps it was not the primary motivating factor in this instance, but there are many bodies of evidence to suggest that it was at least one of the key motivations. The explanatory memorandum refers to the Intergenerational Report’s conclusion that ‘an increase in the labour force participation of older workers would decrease future fiscal pressures’. In establishing the need for legislative change, the explanatory memorandum goes on to argue that ‘the costs of age discrimination may increase in the decades ahead if nothing is done’.

The Democrats believe that this is entirely the wrong reason for introducing age discrimination legislation. It is interesting to note that most of the reports regarding the issues associated with Australia’s ageing population have been published in the last couple of years. On the other hand, the few reports referred to in the explanatory memorandum which touch on discrimination issues involving young people are four to five years old. These include the report by the Joint Standing Committee on Treaties in 1998 on the Convention on the Rights of the Child, and the Age matters report released by HREOC in 1999. It appears that neither of these reports provided sufficient impetus for the government to pursue this legislation earlier.

Unfortunately, the focus on older Australians is not restricted to the explanatory memorandum; it was also evident in the consultation associated with the bill. As part of the process of formulating the bill, the government established a core consultative group to review current legislation. However, the group’s 30 members included only four representatives of youth organisations. This lack of consultation regarding the effects of discrimination against young people is reflected in the provisions of the bill itself. Media reports suggest that the bill has angered youth advocates, who believe that it ignores young people in favour of protecting older employees. The most obvious example of this, of course, is the exemption relating to youth wages.

The Democrats have long opposed the concept of youth wages and do not believe they should be exempted from the prohibition against age discrimination. Many of the organisations which gave evidence to the Senate Legal and Constitutional Legislation Committee share this view, including the Australian Council of Social Service, the Australian Nursing Federation, Australian Lawyers for Human Rights, the YWCA and HREOC itself. When we look at the issue of youth wages we need to remember that young people are required to pay the same amount for food, rent and clothing as other Australians and that only full-time students have access to cheaper public transport and...
other concessions. The Democrats believe it is unjustifiable on one hand to confer 18-year-olds with the same rights and responsibilities as other adults—including the rights to vote, to consume alcohol and to drive and full responsibility for their actions under the law—but on the other hand to pay them less for performing the same duties as other adults.

Youth wages convey the implicit message that work undertaken by young people is somehow less valuable than work undertaken by older people. They suggest that the worth of a worker is to be determined according to age rather than skills, training or experience. They represent a fundamental contravention of the principle of equal pay for equal work which is enshrined in the international human rights conventions to which Australia is a signatory, including the Universal Declaration of Human Rights. Youth wages are inherently discriminatory. The policy justifications advanced in their favour are unconvincing. The Democrats do not believe that reducing pay for young Australians is the way to create job opportunities for them. For all of these reasons, the Democrats will be moving an amendment to ensure that youth wages are not exempted from the prohibition against age discrimination.

The Democrats will also oppose the exemption relating to industrial awards and workplace agreements, which would undermine the objective of this bill to prohibit age discrimination in the workplace. This exemption means that there will be nothing to stop employers from seeking to enter into inherently discriminatory agreements with their employees. The Democrats are concerned that, given the power imbalance that so often characterises the employer-employee relationship—particularly where the employee is a young person—the bill leaves considerable scope for employers to circumvent the prohibition against age discrimination. We agree with the Council on the Ageing that existing awards should be subject to a two-year exemption from the legislation so that they can be reviewed and, if necessary, varied in order to ensure their compliance with the new regime.

The Democrats have a range of concerns relating to other exemptions which I will expand on at the committee stage. But the point needs to be made that the regime established by this bill is founded upon masses of exemptions. In fact the Democrats wonder whether it might have been more expedient for the bill to expressly permit discrimination on the basis of age and then set out a few circumstances in which discrimination is not allowed, rather than the other way round. As the Council on the Ageing has argued, the broad scope of the exemptions in this bill demonstrates the government’s reticence in embracing its own age discrimination laws. The Bills Digest went as far as saying that age would be the most conditional of the prohibited grounds of discrimination. The prohibition afforded by this bill is also diluted by the lack of any prohibition against harassment on the basis of age. In this respect the bill differs from other Commonwealth antidiscrimination legislation. The Democrats, along with ACOS and ALHR, believe that the government has a responsibility to provide legislative protection against harassment on the basis of age.

Finally, I would like to talk about what is perhaps the most glaring omission from this bill: the failure to establish an office of age discrimination commissioner. In his second reading speech on the bill the former Attorney-General indicated that the decision not to establish an office of age discrimination commissioner was consistent with the government’s proposed reforms to HREOC. Those proposed reforms are set out in the Australian Human Rights Commission Legislation Bill 2003, which is yet to be debated.
in this chamber. That bill seeks to reduce the effectiveness of HREOC by abolishing specialist commissioners and replacing them with generalist commissioners. It will also undermine the independence of HREOC by requiring the commission to seek the permission of the Attorney-General before intervening as an interested party in court proceedings. The government has also proposed the removal of HREOC’s power to recommend compensation. Not only will this reduce the likelihood of matters being resolved prior to litigation; it also denigrates the pain and suffering experienced by those whose rights have been violated.

Coupled with these proposed legislative changes, the government has also diminished the capacity of HREOC to protect Australians affected by race and disability discrimination by failing to appoint a new Disability Discrimination Commissioner and Race Discrimination Commissioner when the previous commissioners’ terms of office expired. And of course there has been a massive reduction in HREOC’s funding during the Howard government’s term of office. HREOC plays a crucial role in Australia as a protector of human rights and defender of individuals and groups who are discriminated against. Its role is particularly fundamental because Australia is the only common law country that does not have a constitutional or statutory bill of rights. As long as HREOC continues to provide the primary mechanism for protecting the human rights of Australians, any diminution of its powers and independence cannot be justified. On the contrary, there is a desperate need to enhance its powers and resources to ensure that it is adequately equipped to protect the rights of all Australians.

I note that the Labor Party denied the Australian Human Rights Commission Legislation Bill a second reading when debate resumes in this place. It is therefore highly unlikely that the proposed changes will ever come into effect. This means that the government’s only stated reason for not establishing an age discrimination commissioner no longer applies. There is no compelling reason as to why an age discrimination commissioner should not be established and every reason as to why one should. It gives me great pleasure, then, to announce on behalf of the Democrats that we will be introducing amendments to facilitate the appointment of Australia’s first age discrimination commissioner. This commissioner will complement the team of other specialist commissioners who currently hold office within HREOC and will play a fundamental education, advocacy and leadership role in preventing discrimination on the basis of age.

It is shameful that the establishment of an age discrimination commissioner was omitted from the original bill. This is particularly so given that a range of organisations have consistently emphasised the value of such an office. However, it is perhaps not surprising, given the many other omissions in this bill and the wide range of exemptions it contains. These massive holes in the regime illustrate the holeyness of the government’s commitment to preventing age discrimination. Nevertheless, the Democrats welcome the limited protections that this bill will introduce and offer. Clearly, some protection against age discrimination is better than none, but this really is more of a starting point. The Australian Democrats look forward to the possibilities of strengthening this regime during the committee stage of this debate.

Senator KIRK (South Australia) (10.39 p.m.)—I rise to speak this evening also on the Age Discrimination Bill 2003. I was a participating member in the inquiry into the provisions of this legislation. I wish to make
a few brief remarks in relation to the inquiry and to outline the matters that were of concern to the dissenting members of the committee, as detailed in our report. In principle, the Australian Labor Party supports the bill’s aim of eliminating age discrimination. Age discrimination is a problem for both younger and older Australians and for the community as a whole. It has been prohibited in all states and territories for a number of years. However, a number of recent studies and reports demonstrate the need for federal age discrimination legislation. These show that age discrimination inhibits work force participation, contributes to higher government welfare discrimination and diminishes the psychological wellbeing of those affected by it. The Australian Labor Party is opposed to all forms of discrimination. Therefore, we are pleased that the government has introduced this measure to outlaw age discrimination at a federal level.

Nevertheless, it is the position of the Australian Labor Party that in a number of crucial areas this bill is seriously flawed. We are concerned that certain aspects of the bill are ill considered and that the government has effectively hamstrung HREOC’s proposed education and complaint-handling functions. The submissions received by the committee indicated general support for the bill. However, there were issues of concern on matters such as the dominant purpose test, the role of HREOC, the exemptions to the bill and other issues including the absence of provisions in relation to age based harassment. Unlike other human rights issues, age discrimination is relatively uncontroversial. Politically this is a safe area for the government. Disappointingly, however, the government is attempting to hoodwink the Australian public by introducing what is really a second-rate attempt to outlaw age discrimination.

The report of the dissenting members of the Senate committee that looked into this legislation found that the dominant reason for conduct clause is impractical. Clause 16 of the bill provides that, where a potentially discriminatory act is done for several reasons, it is taken to be done for the reason of a person’s age only if it is the dominant reason for doing the act. This is a more difficult test to satisfy than those in other Commonwealth and state antidiscrimination laws. During the inquiry, HREOC’s president, the Hon. John von Doussa, pointed out that the substantial reason test used in other Commonwealth antidiscrimination law required:

… something that is not trivial or minor—a significant reason but not a dominant one …

HREOC opposed the introduction of the dominant purpose test. It was of the view that this test would make it more difficult for complaints to succeed, would invite litigation on the meaning of ‘dominant purpose’ and may undermine the objectives of effecting educational and attitudinal changes. Labor members on the committee were concerned that the government had proposed a dominant reason test in this bill. Experience has shown that this test is impractical in the area of antidiscrimination law. In fact, the test was removed from the Racial Discrimination Act in 1990 because of significant concerns about its practical application. Labor members on the committee were also concerned that a fundamental change to antidiscrimination law such as that being proposed by the government was being done without any external consultation. In our view, this change seriously undermines the object of eliminating age discrimination. Labor members agree with the committee that a more stringent test than in other areas of antidiscrimination law signals to the community that age discrimination is of lesser importance when compared with other prohibited discriminatory conduct.

The government has thus created a hierarchy of discriminations in the way in which
this legislation has been drafted—something that I believe shows its less than genuine approach to eliminating discrimination in this area. This is a counterintuitive and impractical clause, and it is inconsistent with other Commonwealth discrimination legislation. It imposes a stricter test that individuals must satisfy to be afforded protection and a remedy than can be found in any of the other antidiscrimination laws. For example, the Sex Discrimination Act does not maintain such inflexible requirements. It rightly recognises that discrimination undertaken on the basis of sex—regardless of the existence of other reasons, however seemingly justified they are—is discrimination and should be dealt with as such. The restrictive nature of this clause portrays an unconvincing commitment by the government to the Australian public on the issue of age discrimination. By requiring a higher standard for claims of age discrimination than for other forms of discrimination, it represents to the public that age discrimination is of lesser importance and concern to the federal government.

The Australian Labor Party does not support hierarchical ranking of people’s civil and political rights and recommends that an amendment be made to bring this part of the legislation into conformity with other state and Commonwealth antidiscrimination laws. Labor is of the view that in order to avoid creating a hierarchy of discrimination we should replace the proposed test with the test that is used in other Commonwealth antidiscrimination law. The dissenting report in the inquiry thus recommended that clause 16 be replaced with a provision similar to that of section 8 of the Sex Discrimination Act that specifies:

... where an act is done for two or more reasons and one reason is the age of a person, then the act will be taken to be done for the reason of the age of a person whether or not that reason was the dominant or substantial reason for doing the act.

The report of the dissenting members of the inquiry also found a need to curtail the exemptions in this bill for liability for discriminatory conduct. Clause 44 of the bill empowers the commission to grant, on application, exemptions from liability under divisions 2 and 3. Under clauses 45 and 46, notices of the commission’s decisions, together with reasons, must be published and are subject to review in the Administrative Appeals Tribunal.

The Councils on the Ageing National Seniors Partnership, COTA, argued before the committee that the statutory exemptions were too broad and either that the exemptions should be examined over a two-year period or that the power to provide an exemption be exercised on a case by case basis by the commission. Labor members of the inquiry were concerned that the exemptions under the bill were too wide and, in some cases, unjustifiably so. The breadth of these exemptions should be curtailed and reconsidered. We do not agree that permanent, blanket exemptions are a balanced proposal. In our view, a more appropriate balance would be either to allow for the opting-out through regulation or to further consider the areas of exemption and the scope of those exemptions. The Labor members therefore recommended that the exemptions to liability for age discrimination be reviewed in two years to ensure that they remain necessary, with the onus on the government to prove their ongoing need.

In addition, this bill proposes various changes that directly affect the Human Rights and Equal Opportunity Commission. It was the finding of the dissenting members of the committee that the resourcing for HREOC is simply inadequate. The issues raised by submissions and witnesses were that no specialist commissioner will be appointed in relation to age discrimination, that no additional resources will be provided to
HREOC and that HREOC does not have the power to undertake systematic investigations. Both the YWCA and COTA indicated that the additional caseload in educational activities by HREOC depended on the increase in HREOC’s funding.

Although the Hon. John von Doussa, the President of HREOC, was unsure of the predicted increase in workload, he pointed to the proportion of age discrimination complaints in other jurisdictions as being 10 per cent. He indicated that HREOC’s existing complaints function would need to be expanded, including employing additional complaints officers and that a major emphasis would need to be placed on education to stop complaints at the outset.

The government has not committed enough resources to HREOC to allow it to address the workload that will be created by these new provisions. Also, an intensive education campaign is expected. However, no additional funding has been committed. Once again, the government’s commitment to antidiscrimination law is shown to be appallingly hollow. We do not agree with the majority view that the government be asked to reconsider additional funding but that the government should actually provide this funding. Harassment is an important issue and, if the government is to take this seriously, it is necessary for it to include in the legislation sections dealing with age based harassment.

In view of the time, I think I will sum up at this point. We in the ALP consider it to be a great disappointment that the government continues to show itself to be struggling with human rights issues. The bill and its effect on the Human Rights and Equal Opportunity Commission, which will only be reinforced by the Australian Human Rights Commission Legislation Bill and which will have the effect of introducing restructuring measures, with a combined reduction of 40 per cent in HREOC’s funding that has come about since 1996, will only undermine the ability of the commission to function effectively. As a consequence, this will significantly inhibit its ability to offer meaningful protection to Australian citizens against discriminatory behaviour or other human rights abuses.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! It being 10.50 p.m., I propose the question:

That the Senate do now adjourn.

Australian Capital Territory: Civics and Citizenship Education

Senator HUMPHRIES (Australian Capital Territory) (10.50 p.m.)—I seek leave to have my speech on the adjournment incorporated into Hansard.

Leave granted.

The speech read as follows—

I rise tonight to acknowledge this Government’s commitment to civics and citizenship education and to pay tribute to the teachers and students who are great role models in these fields. This Government’s commitment to civics and citizenship education is underpinned by its $32 million commitment to the Discovering Democracy program. This has helped revitalise a neglected part of the school curriculum.

The ACT Shadow Education Minister, Steve Pratt, has rightly emphasised the character building role that schools play for young people. I believe an important part of this character building process is teachers encouraging students to learn about their democratic heritage, as well as helping them understand their rights and responsibilities. Discovering Democracy has facilitated this.

Discovering Democracy provides curriculum resources free of charge to all schools as well as professional development activities to help teachers become confident in handling civics and citizenship education.
Last month, as part of Discovering Democracy, the third Celebrating Democracy Week was held in Australian Schools. I would like to pay tribute to some of the ACT schools who were involved in Celebrating Democracy Week. I was privileged to take part in some of these activities; the level of student effort was of a high order.

Hughes Primary School’s theme for the week was “Governments and Democracies Here and There” where five politicians and families of international students shared their thoughts on Australian democracy. The school also heard what parents from other countries think about other democracies and governments.

At St Michael’s Primary School, Kaleen, student members of the school parliament formed a partnership with staff and parents to improve waste management, environmental protection and health. This is part of a five year plan to create active citizens committed to making appropriate decisions and taking active responsibility.

Lyneham High School had a panel discussion on the topic “Equity in Australia’s immigration policy”, and students from Trinity Christian School invited nursing home residents to be part of a student debate titled “Can young citizens have any influence on governments?”

During Celebrating Democracy Week, winners of the 2003 Discovering Democracy Achievement Awards were announced. In the Secondary Teacher Category, Paula Simcocks, from Kaleen High School in the ACT, was a joint winner. This was in recognition of her co-ordination of a unit titled “Is Democracy Alive and Well in 2003—a Case Study of Australia at War in Iraq”. It asked students to consider the complex question of building up democracy in post-Saddam Iraq and to consider alternatives to war.

The project encouraged students to learn about the history of Australia’s system of government; the principles that support Australian democracy; and the values and attributes that enable citizens to participate in the political process and contribute to civic life. This enabled students to recognise fundamental reasons why Australia is a pluralistic, tolerant and democratic society in contrast to Iraq under Saddam.

The students developed a greater understanding of other cultures in order to increase their understanding of how democracy might work in a range of contexts. They visited a Muslim Mosque to gain a respect for diverse cultures, beliefs and practices. At the school’s Harmony Day assembly, a local Protestant Minister, a local Catholic priest and a Muslim prayed, while a Jewish prayer was read.

Students produced research assignments on Middle Eastern countries and religions; a timeline of key events; artwork; poems; a newspaper for children on events; an essay; written exercises and debates.

Evidently, Kaleen High School developed a comprehensive and challenging unit that provided students with an understanding of a complex international issue, as well as teaching them about Australia’s democratic traditions and processes. Ms Simcocks is to be congratulated on her efforts in making the unit a success.

I would also like to pay tribute to those who assisted Ms Simcocks throughout the project. These include Sarah Beckett, a student teacher who assisted in research; Susan Kearns, who provided training in IT and web-quest support; Martina Fechner, from Discovering Democracy, who provided staff with resources; and Sue French, the Kaleen High School Principal, for her support.

The ACT winner of the 2003 Discovering Democracy student essay competition was Kirill Talanine, from Canberra Grammar School. He answered the following question: “What values do you think are important to us as Australians living in a democracy?”

Kirill argued that it was: “Our willingness to help all, unhindered by distinctions of race, culture or creed.”

I doubt that, in all the speeches delivered in this place in a year, such a succinct statement of what democracy means would be found.

The ACT runner-up, Alexander Dawson, also came from Canberra Grammar School.

Accusations of being “un-Australian” are often thrown around by adults who only have a vague idea of what the values of a free and inclusive society are. In a world where ideas are fiercely
contested, I want our young people to be able to go into bat for the values that underpin a successful liberal democracy.

I am pleased civics and citizenship will be tested nationally from next year. Civics and citizenship education should of course be a two-way street. No doubt the next generation of Australians will have their own ideas about how to improve the democratic experiment. That is why this Government is committed to practical measures such as Discovering Democracy which promote trust, mutual respect and social responsibility.

Loh, Mr John

Senator MARSHALL (Victoria) (10.50 p.m.)—I rise tonight to honour the life and to mark the passing of a dedicated worker, unionist and activist, Mr John Loh, who passed away last week after serving the interests of working-class Australian people for many decades. John Loh was born in 1953 to Alan and Dot Loh in the South Gippsland town of Wonthaggi. He was the oldest of three children. He had a brother, Paul, and a sister, Kerry. John was named after his father’s older brother, also named John Loh, who was killed in New Guinea during the Second World War. John Loh thought his uncle was part of an army of working-class men and women seen as expendable by the masters of war. This was one of the influences that formed John’s lifetime opposition to war, which he believed was waged in the interests of the ruling class and paid for by the blood and toil of workers on both sides.

Alan and Dot Loh were share farmers, on dairy farms mostly, during John’s childhood. They took up farms in Poowong, Buffalo, Kernot and Catani during this period. John went to school at Buffalo Primary School, Kernot Primary School, Wonthaggi High and Koo Wee Rup High School. Before and after the bus trips to school, he helped milk cows and do other farm chores, but by the time he had completed secondary education he was in no doubt that the farming life was not for him.

John played football and cricket in the communities he and his family lived in. There are stories of the day he kicked nine goals at full forward for Catani and of playing at the great Peter Knights Stadium. John was a great storyteller and these claims may not stand up, but what is clear is that he had a very keen interest and involvement in sport. Sport, especially cricket and the Royal Park Reds, remained central to John throughout his life. John and his brother, Paul, were keen Essendon supporters in childhood, and John remained steadfast in his support for Essendon despite his differences with Sheedy on tactics. His happiest moments came when the Bombers won the flag.

Alan Loh has said that John hated being told what to do and that he was always in trouble with his teachers. Despite this, John was a very good student and had particular aptitude for the sciences and mathematics. John’s sister, Kerry, has said that John was known to his cousins as ‘the professor’ because of his sharp intelligence and pursuit of knowledge. At the farmhouse at Kernot, John made use of a back room, where he performed experiments, bred white mice and dissected them, and played with chemicals. Kerry remembers the day when, after a loud explosion, John emerged from the room with a blackened face and singed hair. John was making nitroglycerine at the time. Perhaps this is a metaphor for John’s life. He always had an inquiring mind and a thirst for knowledge. He wanted to actively participate in the process of change, and when he did the results were often explosive.

In his final year at high school, he was awarded the Victorian state science prize for experiments on Gippsland kelp. John’s parents were extremely proud when he won a
Commonwealth scholarship and a place at Melbourne University. He was 16 years old when he arrived in Melbourne to study for a science degree. John claimed he came to Melbourne with no money, but he had a bag of spuds to contribute to the house he shared in Brunswick. In 1970 Melbourne was a very exciting place, especially for a young lad from the bush. The university was full of radical groups protesting against the Vietnam War, women’s liberationists were on the march and young people everywhere were challenging the values and behaviour of those in power. The radicalisation of both the student movement and parts of the labour movement, which exploded in Paris in 1968, was continuing unabated.

John left university before the end of the first term and this could be seen as the beginning of his working and political life. He worked as a builder’s labourer and became very active in protest action against the Vietnam War. This brought him into contact with a wide range of people with a wide range of political views and the numerous parties and sects of anarchists, communists, Trotskyites and social democrats that constituted the Left. He became involved with the Federation of Australian Anarchists and the Free Store in Smith Street, Collingwood. He is remembered as being very young and enthusiastic and one who ‘talked less and did more’. He was instrumental in setting up the Free Medical Service and the Free Legal Service that also operated out of the Free Store.

He went to Queensland to look around and worked as a shunter at Roma Street in Brisbane, the most dangerous job he ever had. Returning to Melbourne, he worked on Mainline’s Collins Place project until Mainline went broke. In Sydney, the Mundey-Owens team had radically changed the New South Wales BLF. They delivered improved wages and conditions and better safety for builders’ labourers. They instituted a more participatory democratic decision making process, with limited tenure of office for union officials. They acted to bring women into the industry and to give migrant workers a voice. They responded to calls from the community to defend workers’ homes and the environment from rapacious developers and a right-wing government. John Loh became part of a group of rank and file BLs who supported these policies and challenged the Victorian leadership to implement them. These people were identified as ‘white-anters’ and ‘Mundeyites’ for supporting Jack Mundey.

As CFMEU Victorian president John Cummins, a lifelong friend and comrade of John’s, has said:

Lohie’s gift for words and his ability to cut through a complicated argument to the guts of the matter was put to good use then, as Jack’s idea of where the BLF should head clashed head on with Normie’s.

But that bitterness and tough infighting saw Lohie at his best because, although outgunned and outmanoeuvred by the Gallagher team, John distinguished himself as a fearless and vitriolic fighter, willing to give as good as he got. His talent for words and his lateral thinking enabled him to come up with a view that no-one else had thought of. In fact, Lohie ‘thought outside the square’ before the term was even invented ...

John was the key to a small group responsible for a rank and file publication called On Site, issued between 1971 and 1976. He wrote articles, organised translations, laid out copy, printed and distributed it. At the same time, he worked in the Link collective, which published a journal for some branches of the AMWU. It consisted largely of interviews with shop stewards and aimed to give workers a voice which would enable them to communicate with each other. The need to give workers a voice by printing their stories
and to counter the dominant media was a constant theme in John’s life.

After the 1974 deregistration of the BLF and the intervention of the federal BLF into the New South Wales branch, it was difficult for John to find work. He returned to shunting, this time with Victorian Railways, for a couple of years. In the mid-1980s, John put his energies into the ‘Free Norm’ campaign. Notwithstanding John’s earlier differences with Gallagher in the Mundey disputes, his view was that this was an attack on the union and the right of builders’ labourers to organise. Accordingly, the union and Norm had to be defended. Throughout 1986 and 1987, John worked tirelessly as his union was under attack from the then Labor government’s derecognition act and the deregistration of the union. This was an intense battle, as employers and the government spared no effort in crushing the BLF. John and many others carried scars from the battle but were not cowed. They continued to fight for the rights of builders’ labourers.

John continued to work as a steel fixer and, as a rank and filer, organised a successful steel fixers’ strike despite opposition from the BWIU leadership. In 1992 he took up a job with the newly elected Independent member for Wills, Phil Cleary. He worked for the CFMEU from 1994 until recently. To quote John Cummins again on John Loh:

A rank and file agitator for more than 20 years, he was always there, showing leadership qualities beyond the call. In the aftermath of BLF deregistration, Lohie, together with Dave Pillar—who also sadly passed away recently—set about organizing builders’ labourers, and in particular his beloved steel fixers, within the BWIU.

His leadership and strong character were again in evidence when he played a key role in brokering the amalgamation into the CFMEU.

As well as serving as a noted organizer in the northern suburbs, he was appointed to the union’s Management Committee and National Council.

John’s vast knowledge and ability with words made him a natural to take over the CFMEU publication section. He was the complete propagandist, our union wordsmith. ‘We Built This City’ and ‘Touch One, Touch All’ are vintage Lohie. His commitment to the union movement was total. From his early days in the BLF to his years with the CFMEU, he never wavered in his loyalty to his union mates and his unconditional sense of justice to the working class.

Finally, I wish to pay tribute to John Loh and his life of achievements. I am proud to have had the privilege to know John and to be able to call him a comrade. John will be sadly missed by many people, including his family, friends and colleagues, and my thoughts are with all of them at this very sad time.

Walkley Awards

Senator CHERRY (Queensland) (11.00 p.m.)—I seek leave to incorporate my speech.

Leave granted.

The speech read as follows—

Last Thursday night, the annual Walkley Awards was held, the night of nights for Australia’s media.

As the Democrats Communications spokesperson and, like all politicians, a keen observer of the media, I wish to congratulate all those journalists honoured this year, and indeed all of those journalists who continue to pursue truth and accuracy regardless of the pressures imposed on them.

I particularly congratulate Richard Moran, Paul McGeough and Jason South on their awards at the top of the list.

The ABC, which has been under attack by the Howard Government all year, won all three awards in the radio category and two of the four television awards, with a Walkley to Andrew Denton’s Enough Rope for broadcasting interviewing. Given the intense pressure that the Government has placed on ABC journalists throughout the year, this is a credit to the continuing high standards of the ABC.

I particularly note that the award for Radio Current Affairs Reporting went to the AM program
and Mark Willacy for his report on “The Fall of Saddam”.

I also wish to congratulate Matt Peacock, ABC’s then London based correspondent, who last week won the British Foreign Press Associations; award for the best story by a foreign journalist. That was another radio story related to the Iraqi war, this time for PM, on Tony Blair’s “master of Spin” Alistair Campbell.

The ABC’s coverage of the Iraqi war, particularly that of AM, senators would recall, has been the particular subject of complaints by former Communications Minister Senator Richard Alston and the new Queensland Senator Santo Santoro.

Since May, Senator Santoro has spoken in this place on six different occasions, using the Senate to attack various journalists and journalistic decisions within the ABC.

On August 13, his most virulent attack on AM’s coverage of the Iraq war, was a particular attack on Linda Mottram, where he said her comments “…highlights the instinctive anti-American ism and the institutionalised hostility to this government that has become part of AM’s stock in trade. But it is not only bias. It is sloppy and shoddy journalism, which should have no place at the ABC.”

He goes on:

“Sloppy and shoddy journalism—the sort that perennially transmits the leftist coda of the media elite.”

On October 15, Senator Santoro declared himself a “friend” of the ABC, and defended his ‘careful monitoring’; of its output as “the key to securing an ABC that can match the best in the world in the professionalism and objectivity of its reporting.”

Well, I say to Senator Santoro, three out of three radio Wakeley’s, and two out of four television Walkleys is in my view, a pretty clear indication that ABC radio and television does, in fact match the best in terms of professionalism and objectivity.

The ABC does not need Senator Santoro as its self-appointed moral guardian to set its standards. In fact, the ABC should fiercely resist any effort by any Government to dictate its line of reporting.

This will not be the first government to complain of ‘hospitality; from the ABC, and I certainly hope it will not be the last. What to Senator Santoro is ‘hostility’ is to me and millions of ABC listeners and viewers a healthy scepticism towards Government and power that is necessary if a publicly-spirited media organisation is to do its job.

The audience is clear in its views. According to Newpoll, 90% of AM/PM listeners regard the programs as balanced and even handed, with the proportion arguing that the ABC does a very good job rising from 41% to 45% in the last year.

The audience has spoken, the ABC’s journalistic press in Australia and abroad have spoken. Even the Independent Complaints Panel, in dealing with the 68 complaints lodged by Senator Alston, concluded, and I quote:

“The Panel finds no evidence, overall, of biased and anti-Coalition coverage as alleged by the Minister, nor does it uphold his view that the program was characterised by one-sided and tendentious commentary by program presenters and reporters. The Panel believes that the AM coverage of the war was competent and balanced.”.

I congratulate all ABC staff on the work that they have done over the course of the year, and I particularly congratulate those whose work has been acknowledged by the peers in awards last week.

While on Communications, I also wanted to respond to the announcement yesterday of a review by the Department of the current Customer Service Guarantee and Universal Service Obligations announced yesterday. This review flows from the recommendations of the Estens Inquiry.

In my view, it is very much overdue. There are concerns with the CSG in particular. The CEPU has raised questions about whether the nature of the repairs measured has resulted in a ‘quick fix’ mentality, with a continuing failure by Telstra to repair the underlying network faults. There have been concerns that the CSG has not kept pace with changes in telephone services. It does not, for example, encompass internet or broadband services. It doesn’t deal with recurring faults.

The biggest flaw with the CSG is that the regulator—the Australian Communications Authority is
failing to ensure that the reporting of the CSG actually leads to an improvement in services.

Take my state of Queensland. In June 2001, the percentage of faults not repairs with the CSG timeframe was 7% for urban areas and 5% for rural areas. By June 2002, the urban performance had declined to 11%, while rural areas improved slightly to 4%.

But by June 2003, the urban faults not repaired had blown out to 18%, and rural faults out to 6%.

A similar picture has also emerged in New South Wales and Victoria. Yet, in each of those three years, Telstra proceeded to get rid of around 3000 staff a year, and plans more staff cuts this year.

Most of those staff cuts are now occurring in field staff, with thousands disappearing from regional areas.

I got to hear firsthand about the impact of those cuts in staff, and the failure of the ACA to insist that Telstra do what is required to actually improve its CSG performance in a recent swing through rural Queensland.

The invitation came from the Independent Member for Kennedy, the Hon. Bob Katter. We were joined by another Queensland Senator Len Harris, and visited Townsville, Charters Towers, Hughenden, Toowoomba and Dalby.

I can see why Mr Katter left the National party when you try to marry up the strong opposition—some 80%—to the sale of Telstra with the National Party’s support for the sale.

Most rural areas in Queensland have offered generations of support to the Nationals with the expectation that they would represent their needs and see that their needs are dealt with by Government.

Being part of the coalition with the Liberal party was all about getting action on some of the items on the Nationals agenda.

But, increasingly, the Nationals are settling for the crumbs off the Liberals’ dining table.

Well people are sick of it, and they are sick of the empty promises, the broken promises, they are sick of being treated like second-class citizens.

Not surprisingly, the Nationals have been sliding away. In 1984, the Nationals won 9 of the 24 Federal seats and 3 of the 10 Senate seats in Queensland, and 43 of the 82 State seats.

Since then, the Nationals have been in decline. Their last Federal election was their worst, just 4 out of 27 Queensland Federal seats, 1 of the 12 Senate seats and just 12 out of 89 State seats.

During this same period, the gap between urban and rural Australia has widened. National Competition Policy, privatisation, deregulation and government cutbacks have reduced services to many towns.

Rural health and education services continue to lag behind national levels on every indicator.

The Nationals have failed to respond to this crisis. Yes, I can see why Mr Katter left. I can also see why the voters in so many State seats have turned to independents or even One Nation, or, shock of shocks, the Labor Party for alternative representation.

The sale of Telstra looks like being the latest example of the Nationals selling out the interests of rural Queensland.

People do not want this thing sold. They do not want to be put in the position where a company who is bound by the incentive of shareholder profits is determining whether or not they are going to get a service.

No matter the promises by the government to protect the access to services, the promises of future proofing are not believed. Already we are seeing things like the bar being lifted for broadband access.

Bob Katter and I have some very different views on many matters.

However, we are both very suspicious of what possible benefits will flow to rural Queensland from the privatisation of Telstra or further deregulation of agricultural industry and small business. Ask the dairy farmers or the sugar growers or the egg producers if they are better off post deregulation.

I thank Bob Katter for his invitation to address public meetings in his electorate.

The message from the ordinary folk of north Queensland, western Queensland, and even central and southern Queensland is quite clear to the
Nationals— you will have to do much better, or your party faces oblivion.
The rural revolt of the late 1990s has not abated. The anger, the disillusionment and the sense of being let down is still there. It is time the members of the Howard Government started listening.

**Outback Highway**

**Special Broadcasting Service**

*Senator SANTORO (Queensland) (11.00 p.m.)—*Out of an abundance of consideration for the very reasonable needs and requests of my colleagues, this evening I would like to incorporate an adjournment speech which touches on the Outback Highway at Longreach—the ‘Walking Together’ concept—and the SBS TV treatment of issues relating to the Vietnamese news service. In the speech, I also touch on the SBS alleged anti-Semitic bias in its coverage of the Israeli-Palestinian issue.

Leave granted.

The speech read as follows—

In a country such as ours, where distances are vast and the population scattered, we need to think laterally about things like transport infrastructure.

Economies of scale cannot be the sole benchmark when the object of the exercise is essentially two-fold—to provide transport infrastructure and to support the historical distribution of Australia’s population that makes this country what it is.

Our land, as the words of the national anthem put it, abounds in nature’s gifts. Our job, the Australians, is to ensure that we all benefit from those gifts to the full extent possible—and to recognise that this means transport infrastructure that can never actually be cost-effective.

That may be hard for people in densely settled Australian cities to fully comprehend. But it is nonetheless an essential part of what we are all about.

The proposition that we should consider a third transcontinental road crossing falls squarely into this area of what should be an ongoing—and one would hope objective and proactive—national debate.

The proposal for an Outback Highway, constructed at relatively low cost from the existing network of roads and tracks across the middle of our continent, has been championed in the House of Representatives by the member for Kalgoorlie.

In Queensland, I know it to be a concept that interests my friend the member for Gregory in the Queensland legislature, Mr Vaughan Johnson.

It is of deep interest too, to the people of the Centre, specifically those of Alice Springs—which with the new transcontinental railway linking Adelaide with Darwin is surely on the verge of expansion as a centre of settlement and new industry.

It is literally vital to the people who live west of The Alice, in the desert country of the southern Northern Territory and central Western Australia.

They are deprived of many services that the vast majority of Australians take for granted—and among them, access to cheap transportable fresh food.

An all-weather road would help alleviate that problem.

The proponents of the scheme for an Outback Highway point also to the future of tourism in the inland, something that is in the forefront of our minds at the moment in regard to the new White Paper released just last week by the Minister for Tourism.

It is certainly true that the market for—if I might put it this way—low-risk adventure touring of inland Australia is something that we can grow probably by quantum sums.

It surely represents one of the edges that Australia has over competing tourism markets for the world traveller, who is now to be numbered in the millions.

An all-weather transcontinental through the middle of the continent would be a significant added value to that pitch for custom and the dollars that come with the customers.

The Outback Highway proposal would also make it easier and far shorter in terms of distance travelled and time taken to link the tourist attractions of North Queensland with those of southern Western Australia.
It is too early to talk about costs, although some estimates of costs have been made, but it needs to be said that the proposal is fairly modest in terms of upgrades to existing roads. No one is talking about a four-lane blacktop highway here. Essentially it is a question of ironing out the bumps in the existing fair-weather dirt road system, giving it all-weather gravel grading, and perhaps cutting off a few of the corners. There is a proposal around. The Outback Highway has its own promotional organisation. The proposal is quite detailed and is certainly worthy of study by anyone who has an interest in augmenting and enhancing the inland transport of Australia. I suggest that it is time to look at such a proposal, with an open mind, and to discuss among all of the jurisdictions involved—the Commonwealth, the States of Queensland and Western Australia, the Northern Territory and the various local councils whose lands the Outback Highway would traverse—whether it is a practical proposition and, if so, how to progress it. This discussion should be objective and be free of the sectional argument that so often, sadly, clouds our national debate about great projects. Australia has to be a land of vision and of visionaries. We inhabit an entire continent. We are all Australians on that continent, and anything that helps to improve the economies of inland communities and will assist in making it easier to travel is surely worthwhile. There is another inland project about which I would like to speak in this debate. It is the ‘Walking Together’ project, the major focus of the Central Western Queensland branch of the Australian Stockman’s Hall of Fame and Outback Heritage Centre at Longreach in Queensland. The concept celebrates the shared interest and community of inland women—settler and indigenous—that came together in the pioneering days and beyond to provide for mutual advance. It is a modest project, in terms of its cost. It involves a life-size bronze casting of two teenage girls—one indigenous, one non-indigenous—walking forward together into the future but acknowledging the past represented by their footprints and the artefacts of their diverse cultures surrounding the base at their feet. I declare an interest here. I feel a special affinity for Longreach and that part of central inland Queensland, which is the wellspring of so much of Australia’s heritage and bush culture. The Central Western Queensland branch of the Australian Stockman’s Hall of Fame and Outback Heritage Centre is very ably represented in all kinds of forums by Rosemary Champion, of ‘Longway Station’, Longreach. Mrs Champion tells me that the completed sculpture on site will cost $60,000—a modest enough sum—and that they have already raised $32,000 towards this goal. The two figures are now awaiting casting. Mrs Champion describes them as magnificent and truly depicting the soul of the two cultures—indigenous and non-indigenous—that for a century and more have worked together to build a community in the west. The organisers of the project hoped when they began it to unveil the memorial during the Easter in the Outback festival in 2004, but this naturally depends on accessing funds to complete the work. It is a fitting tribute to women of all backgrounds and every race and culture in the history of pioneering Australia’s inland. It is part of a story—a hugely important part and one that is too often overlooked—that really is an Australian triumph and deserves recognition as such. The work symbolises the unique contribution of women through successive generations to advancing community and settlement, industry and shared culture, in the inland. It symbolises too their dependency on each other in their roles as mothers and in bonding together against the harshness of the region—part of its beauty, but a constant danger—to ensure mutual survival. It tells a good news story—a very welcome one. The organising committee chose Dr Rhyl Hinwood of Brisbane, from 12 outstanding sculptors throughout Australia.
The project was commenced in 2002 with funds bequeathed from the estate of Betty Bunkell Wakely and the estate of Mrs Rose McKenzie, originally of ‘Rosebank’, Longreach, and with funds raised by the Central Western Queensland branch of the ASHF.

The memorial will be placed in the beautiful rose and native garden that surrounds the R.M. Williams Library and Research Centre at the Stockman’s Hall of Fame.

It will be positioned on the eastern side of the cottage that houses these facilities and next to the road leading to the Hall of Fame.

The written stories that the organisers have collected since 1998, when the project was first mooted, will be placed in the library.

I commend this project to the Senate as something that I believe captures the true spirit of the outback and the human warmth of the inland.

There is one other matter that I should like to mention in this adjournment. It is the matter of the disquiet in large parts of the Australian Vietnamese community over the decision by SBS Television to broadcast unedited the satellite news service of VTV4 in Vietnam.

There was a powerfully supported rally outside the SBS headquarters in Sydney today, where the call of large numbers of Australian Vietnamese for an end to the broadcasts was repeated.

I sent them a message of support in which I said that I sincerely hoped that, this time, SBS management would hear the message loud and clear.

The signs are that it has.

Organisers of the protest met the SBS managing director, Mr Nigel Milan. This is a positive development and those of us who have been watching the developing story of SBS’s miscalculation over screening unedited pro-communist, pro-regime television “news” from Vietnam will carefully watch the outcome.

It is heartening to hear from SBS that its board will consider the matter—among others—at its meeting on Friday.

SBS may have been trying to do the right thing by providing a service to its Vietnamese-speaking audience in the same way that it provides foreign language television news services to speakers of other languages.

But in this case they made a mistake. They must recognise that mistake and correct it.

I have taken a considerable interest in this argument over whether it is appropriate to screen Vietnamese propaganda on free-to-air public television in Australia because of my long association with the Australian Vietnamese community.

I have known Dr Cuong Bui, who is very much the leading light of the Queensland Vietnamese community and a national figure within the Australian Vietnamese community, for a long time, and worked with him on public policy issues over just as long.

The emerging dispute over SBS’s decision to screen VTV4 news broadcasts—and its astonishing assertion that before taking this decision it had vetted the broadcasts and found no evidence of propaganda—has introduced to many new friends in the Vietnamese community.

They include Mr Trung Doan, national president, and Dr Tien Nguyen, leader of the NSW community.

There are many others.

I firmly believe in the principle that people are entitled to watch what they want and listen to what they want—and of course if they want to listen to communist propaganda, well this is a free country.

But the argument relates to whether this is appropriate from a public broadcaster.

On March 3 this year I spoke in this place about abuses of human rights by the authorities in Vietnam. As my colleague Senator Brandis illustrated in a speech in the chamber last night, these are not things that can ever sit comfortably with any true adherent to the cause of freedom and democracy.

Senator Brandis is but one of the colleagues whose interest in these issues deserves to be acknowledged.

Australia’s Vietnamese community has helped to further enrich the vibrant culture of our country today. It deserves to have its views taken fully into account on matters such as the current issue of contention.
On another issue of contention about which I have approached SBS, that of perceptions of anti-Israel bias in its news and current affairs broadcasting, I think it would be useful to place on the record tonight that these are questions to which I am determined to get answers.

I hope that I shall hear from SBS very soon about these things.

Paramount in this is the development of a truly independent complaints process.

Strong accusations of bias in SBS news and current affairs reporting over the Israel/Palestine question must be vigorously pursued.

There is always room in reporting events—particularly in reporting dangerous world political crises such as the Arab-Israeli dispute—to give both sides of the story.

It simply isn’t possible—and it certainly isn’t fair—to buy the excuse that balance in news and current affairs reporting is something that is achieved ‘over time’.

Balance is the essential ingredient of every single item that is broadcast.

In the case of the Middle East and the confrontation between Israel and the Palestinians, it is even more important to achieve balance in every item.

Let those who are interviewed or who are giving genuinely expert opinion make their statements, but give all sides a go. That’s nothing more than fair play, but it’s fair play that is too often denied in SBS coverage of the Israeli-Palestinian issue.

SBS screened the Palestinian propaganda film ‘Jenin, Jenin’ knowing full well that the claims it made about a massacre by the Israelis were simply rubbish.

It is impossible in those circumstances to say, as SBS has up to now, that this fiddling with facts can be corrected over time by giving people the opportunity to see other material.

Israeli spokesmen hardly ever get a fair go. SBS is helping to create a situation in which fact is forgotten. But fact is the crucial ingredient in understanding any situation.

I asked SBS a lengthy series of questions on notice at the supplementary estimates hearings in November. I am looking forward with keen anticipation to receiving answers to them from SBS.

Complementary and Preventative Health Care

Senator BARNETT (Tasmania) (11.01 p.m.)—I seek leave to incorporate my adjournment speech.

Leave granted.

The speech read as follows—

Tonight I rise to help raise public awareness about the value of complementary and preventative health care.

This is certainly not a new phenomenon, but nevertheless health costs in Australia are leapfrogging inflation. By 2006-07 Australian Government outlays on health will reach an estimated $36 billion a year—this works out at $1,800 a year for every Australian. It is time we as a community invested more time, research and expense in preventing disease—at least comparable to what we invest in treating disease.

It is fair to say, that while governments have invested most admirably in health care such as the PBS, public hospitals and the Medicare reforms, subsidised health alone is not the panacea for all the health care problems we have.

Last Wednesday I co-hosted a “Wellness Dinner" at Parliament House put on by the Complementary Health Care Council, and I want to congratulate the council’s Executive Director Val Johanson and Chair, Christopher Dean for their invaluable involvement and contribution to health care. I also acknowledge the speakers at the dinner and their important contributions: Professor Stephen Myers, Professor Marc Cohen, Dr Mark Donohoe, and indeed the sponsorship support of Michael Saba of Swisse and Marcus Blackmore of Blackmores.

Also yesterday I officially opened the annual conference of the Nutrition Society of Australia in Hobart, and I want to thank Jennie Brand-Miller for the work of her society in promoting healthy diets. The work required of these people and their organisations is symptomatic of the need to encourage consumers to take more responsibility for their health.

We all want to live well and live longer. We all want to maintain the lifestyle of our youth for as long as possible into middle and old age. If we
aspire to this we have to work at it for years in advance, and this is why I hail the people involved in the front line of preventative health.

According to the Complementary Healthcare Council of Australia there are 14 million Australians, or 70% of the population who use a natural health care product at least once a year. As well 80% of Australian GPs are referring patients for complementary treatments, while Australians spend about $1.5 billion a year on natural health care products.

The challenge for governments at all levels is to boost consumer confidence in natural health care products as well as increasing research into natural and complementary health care. We are all well aware of the Pan Pharmaceuticals crisis and the difficult challenges the industry has faced.

In addition, I am advised that in 2000 this discipline attracted only $65,000 in research grants, while pharmaceuticals research attracted an estimated $2.30 million.

Last year research at Harvard University in the United States found that most people do not obtain an optimal amount of disease-fighting vitamins for their diet alone. The study recommended that all adults should take a daily multivitamin. Such multivitamins are safe, readily available and they are a cost effective way of helping to prevent chronic disease such as heart disease and some cancers.

Indeed the study by national healthcare consulting company, The Lewin Group, in the US has concluded that daily use of multivitamins by older adults could save the US health system $1.6 billion over the next five years.

The United States Government has established a National Centre for Complimentary and Alternative Medicine with a budget this year of about $A180 million.

The objectives of the centre are support for research into Complementary and Alternative Medicine, sponsoring conferences and education programmes and integrating this science into conventional medicine, and in my view has great merit if a similar type of centre, and the relevant research could be established in Australia.

I can also see benefits in the establishment of a natural Healthcare Advisory Council in Australia with the purpose of ensuring consultation and interchange with the key stakeholder groups such as the Complementary Health Care Council, the Australian Self Medication Industry, consumers, and government.

In addition I can see merit in an on-line consumer information service to provide consumers with balanced, factual information on natural health care. The establishment of this service would need to be acceptable to the Australian Government.

I hope the Australian Government will consider the merits, in a cost benefit analysis into the potential savings from a greater use of natural health. The benefits of glucosamine for osteoarthritis is one such example.

Over the past two years I have been heavily involved as a Senator in promoting a healthy lifestyle in our community, both through forums in my home State on childhood obesity, and helping the advertising industry develop a pilot awareness TV advertising campaign aimed at educating our children to eat a balanced diet and exercise regularly.

The aim generally has been to increase the proportion of children and young people who participate in and maintain healthy eating and adequate physical activity.

Why? Because there are 9 million Australians either overweight or obese, and this includes 3.3 million in the high-risk obese group. Obesity is costing Australia about $1.3 billion a year, and according to the latest National Obesity Taskforce report this figure is rising fast.

Australians are getting fatter. 67% of Australian men and 57% Australian women are obese or overweight. Childhood obesity has more than doubled in the past 10 years.

There are a staggering 8000 deaths in Australia annually related to weight problems. I find that statistic extraordinary!

Obese people are six times more likely to get coronary heart disease and 10 times likely to get diabetes.

Obesity leads to diabetes, heart disease, cancer, amputations and the vicious circle of a sedentary
lifestyle. We have seriously unhealthy habits and refuse to change.

As a nation we must tackle this crisis with all means available.

In the case of Australia and the USA at least, nearly half of all deaths can be prevented or postponed by effective public health practices. This is the real tragedy—these deaths are preventable long before a personal health crisis looms.

All the research confirms that obesity is the 21st Century tobacco. We now have an epidemic and the diabetes community knows it, nutritionists and doctors know it, fast food chains and processors know it, and lawyers know it. Companies that engage in advertising and marketing that encourages poor lifestyle habits are at risk of litigation.

The world’s fast food companies are in danger of becoming the tobacco industry defendants of tomorrow.

I have suggested a range of initiatives which are not prescriptive or exhaustive, but which I believe deserve our consideration and development into a national strategic plan.

Last Friday the Australian Soft Drinks Association advised me they would support the regulation of soft drinks in primary schools, based on science and nutrition. The industry would need to work with State Governments, the Australian Government, and with nutritionists to determine an appropriate set of regulations and guidelines. I congratulate the Association on their efforts.

There should be legislated compulsory physical education in all primary schools throughout Australia. Some States do. Tasmania does not. Maths and English are compulsory subjects in schools, so why not physical education.

Schools and colleges need to be encouraged to provide both the venue and the time for a healthier lifestyle, integrated into the curriculum. We could do this by a series of incentives. I like to regard them as the introduction of “fitness credits” where a school would be rewarded for promoting sport and physical activity. Financial and other incentives should be provided to those schools that are pro-active in encouraging physical activity above minimum recommended levels.

I support Tuck shop Smart Cards, to empower parents to be able to determine and know what their children buy from the school canteen or tuck shop. I know school canteen auxiliary bodies support this measure, because it becomes another way of involving the parent in the student’s well-being and development. I support the accreditation of school canteens and believe we can do more to promote a balanced healthy diet for children.

Doctors should be encouraged to make lifestyle prescriptions for patients, such as a timetable and guidelines for walking, jogging, or other physical activity. GPs should work more closely with the health and fitness industry to achieve this objective.

Government, business and community groups and families should work together to encourage Internet, video games and video television-free weekends. As my colleague, Youth Affairs Minister Larry Anthony, says—get off the Play Station and get out into the Playground.

In summary there is much being done and much to be done, for the sake of our children.

Within a few decades I trust and pray that we will look back and say—that fixing the obesity epidemic was a triumph, and as vital and historic as changing attitudes and behaviour towards smoking.

Finally, but not least of all, I want to congratulate Dr Peter Little of the Baker Heart Research Institute in Melbourne, for his appointment last Sunday as National President of Diabetes Australia.

Dr Little is highly regarded and will do an excellent job. I also acknowledge the outstanding contribution of Graham Harris, his predecessor, and thank him for this.

Diabetes is a mass killer which can be both contained from spreading and controlled among those with diabetes. In this regard Dr Little takes on an enormous but vital task, and for the sake of those one million Australians who have diabetes I commit myself to his success and that of Diabetes Australia in helping people with diabetes.

I am aware that one of his key objectives will be to identify the 500,000 Australians who have diabetes but as yet don’t know they have it.
In addition I can assure all Australians with diabetes that the Parliamentary Diabetes Support Group chaired by Judi Moylan MHR, will be working to meet this objective also.

Photonics

Senator TIERNEY (New South Wales) (11.01 p.m.)—I seek leave to incorporate my speech on the advances in the field of photonics and reports on new discoveries in this area.

Leave granted.

The speech read as follows—

I rise tonight to speak on the advances in the field of photonics and report on new discoveries in this area.

I recently spoke at the 12th anniversary dinner of the Australian photonics CRC.

I emphasised that this nation’s fortunes over the coming decades will be largely dependent upon our ability to generate and support innovation.

The Australian photonics CRC is no stranger to innovative research and its application in industry.

Under the leadership of the board chaired by Tony Staley and through the tireless efforts of its CEO, Professor Mark Sceats, the Photonics CRC has a strong record of achievement in supporting the development of the Australian photonics industry.

The Photonics industry has grown significantly over the past decade.

A recent overview on the industry provided by the Australian Electrical and Electronic Manufacturers association found that:

- The industry was heavily export-focused.
- The workforce in the industry rose from about 200 in 1998 to 1,700 in 2001.

The industry has gone through a very difficult period since then, with the bursting of the dotcom bubble.

However, in its early stages, the building up of this industry was due in no small part to the existence of the Australian Photonics CRC.

The Australian Photonics CRC has been one of the great success stories of the CRC programme and of public sector investment in R&D in Australia more generally.

Since the CRC was formed in 1992, the Australian Government has provided it with more than $50 million in funding.

The returns on this investment have been considerable.

It has a strong record of collaboration.

Its membership is broad, including a wide range of industry partners, five universities, NSW TAFE, and the Defence Science and Technology organisation.

The Australian photonics CRC is now producing over a hundred peer reviewed research papers a year and its patent portfolio has grown year on year since the centre’s inception.

Around a dozen PhD scientists graduate in photonics from the CRC each year and some of these have gone on to found or participate in high-technology spin-off companies from the Australian photonics CRC.

The Australian Photonics CRC has also teamed up with a number of TAFEs so that there are now about 600 TAFE students undertaking photonics related study in Australia, whereas even five years ago there were almost none.

The excellent record of the Australian photonics CRC in commercialising its technologies includes the creation of many successful spin-off companies, of which just a few recent examples are: Redfern Optical Components; RPO; Cactus Fibre; Centaurus Technologies; and Kadence Photonics.

RBN has achieved over US$6 million in sales over the past 15 months and is poised to sign multi-million dollar sales agreements with two major multinational companies.

The CRC is also closely linked to the bandwidth foundry, through the CRC’s company, Australian Photonics Pty Ltd.

The foundry will provide services to the local Photonics industry.

Last year the Australian Government announced $9.5 million in funding for the bandwidth foundry under the Australian government’s major National Research Facilities Programme.
We have been taking a close look at Australia’s science and innovation landscape to inform decisions on government policy in this area.

We have conducted a study to map the country’s science and innovation system;

We have evaluated the knowledge and innovation reforms that transformed the block research funding arrangements for universities;

We have reviewed the scope for greater collaboration between universities and publicly funded research agencies;

We have had a taskforce to develop a national strategy for research infrastructure; and

We have reviewed most backing Australia’s ability programmes, and also evaluated the CRC programme.

The reply from the industry is, “what is next?”

In some ways, it is too early to say.

But we can foreshadow some of the things that really need to be considered.

There is not a country in the world that could not improve the commercialisation performance of its public sector research institutions.

The first Australian National Survey of Commercialisation (conducted by the ARC, the CSIRO, and the NHMRC) found that in the year 2000, for every one billion dollars of research expenditure:

- Australian public sector research institutions recouped $32m in licence income, compared with $17m for Canada and $45m for the US.
- Australian public sector research institutions created 16 start-up companies, compared with 14 for the US and 38 for Canada.

However, activity among public sector research institutions in Australia remains highly uneven, with just six universities accounting for 90% of the $99 million generated in gross licence income by public research entities in 2000; and just four universities accounting for 59% of invention disclosures.

But “commercialisation”—or “supply-side” innovation policy—is only part of the story.

“Demand-side” innovation policy is equally, if not more important.

This means knowing the market, building relationships between the public and the private sector, and increasing the absorptive capacity of the private sector for new ideas and technologies; and we need very badly to do this more effectively.

Australian universities in 2000 were able to convince Australian businesses to direct a remarkable 2.9 percent of industry financed R&D towards higher education compared to an OECD average of 1.7 percent.

But that is not to say the two sectors could not travel further to better provide for each other.

Under Backing Australia’s Ability, the CRC budget has increased to $202 million in 2004, up from $140 million in 2001.

In 2004, the CRC programme will support 71 CRCs, up from 62 in 2003.

The 2002 selection round was the largest ever conducted.

As I noted earlier, the government recently conducted an evaluation of the CRC programme and it found strong support for the programme’s continuation.

The CRC programme evaluation report has a wealth of ideas about further improvements that could be made to what is already a very successful programme that has been recognised internationally as a model for collaborative, user-focused research.

The Australian Photonics CRC has now for over a decade delivered world-leading user-focused research to Australian science and Australian industry.

With the Government’s help, the Australian Photonics CRC will continue to build Australia’s future.

Labor Party: Superannuation Policy

Senator Watson (Tasmania) (11.01 p.m.)—Given the sensitivities of the Labor Party in relation to their superannuation policy, they have refused leave, so I am quite happy to present my paper in condemnation of the first two tranches of the Labor Party’s superannuation policies. I remind the Senate that there was a comic sitting at the back
during the launch of the ALP’s super policies who was heard to be singing a familiar tune: ‘Where, oh where have their super policies gone; oh where, oh where can they be?’ They were certainly not at the ALP’s highly publicised launch, nor were they locked up in the cupboard. Indeed, they were not anywhere. The ALP have left the superannuation industry sadly disappointed.

Labor did have some good ideas on super in the mid-1990s, under Treasurer John Dawkins. And to give Labor their due, the Liberals at the time embraced Labor’s super regulations and reform controls. But, over the last six years, quite frankly Labor have lost the plot on super. For instance, after opposing the surcharge for six years, when the real test came for a small surcharge reduction, what happened? Labor reneged, abandoning the group of true believers. Shame, shame!

At the 2001 election, Labor had no policies. In their words, they were in a policy-free zone. How convenient. But since the Howard government was re-elected, it has systematically embarked on delivering its promised super policies taken to the 2001 election. These policies were masterminded by Senator Kemp, then Assistant Treasurer. They included the splitting of super contributions between couples; super for life; assistance for the self-employed; assistance for those on low incomes; a reduction of the super surcharge; super for the first child tax refund; a reduction on the tax rate on excessive eligible termination payments, including superannuation contributions; choice of super and portability; and, growth pensions for nonresidents who have permanently departed Australia.

I would like to personally thank a number of Independent senators, Senators Murphy, Harradine and Lees, for standing up for good government policy and allowing the government’s legislative reforms on co-contributions and surcharge reduction to pass through the Senate. In fact, the Howard government has an excellent track record in attempting to implement its election promises on super, with the only remaining issue being the review of growth pensions.

Labor has abandoned many of the sound policies which were originally on its agenda. As for co-contributions and the surcharge reduction, it has—to use the expression of the Minister for Revenue and Assistant Treasurer, Senator Coonan—‘done a John Drummmond’. In rejecting the co-contributions package, it has turned its back on Paul Keating’s policy on co-contributions. I remind the Senate that Labor’s policies are untargeted, uncusted and unfunded and Senator Sherry will fund his measures by abolishing a lot of the government’s sound and popular measures. Shame!

If you turn to regulation issues, the government has had on its agenda competition, fullest and utmost disclosure, effective education and consumer policy. Labor, on the other hand, has defied all those principles and wants a one size fits all system, under which money will be channelled to the union dominated super funds. It is not that I disapprove of the industry funds—in fact, most of them perform quite well—but I do disapprove of political direction and coercion. The ALP does not want to afford individuals the opportunity to obtain competent and professional advice on where their money can be directed—it has something of a problem with good planning and superannuation planners—nor does it want to allow individuals the opportunity to decide how much to pay for that advice. This is typical of Labor’s nanny state approach to consumer sovereignty.

Senator Sherry has been very good at borrowing systems from overseas. But the Em-
ployee Retirement Income Security Act 1974 system—ERISA—that was in use in America, from which he has possibly borrowed, was based on the idea of 100 per cent restitution of assets that were lost as a result of fraud. That system, I remind the Senate, was not a resounding success. It was underpinned by moral hazard and it stripped trustees of the responsibility to act prudently.

Labor’s choice model is a Clayton’s model—the model you have when you’re not having a model. The concept of full compensation for business failure will not enthuse those well-run funds that have to meet the shortfall, nor will they improve governance of high-risk trustees knowing that, should they fail, someone else will pick up the pieces. It also does not fit at all with the concept of providing improved regulation of superannuation trustees. Then there was the additional suggestion, which has now disappeared from the literature, that members should be given a high-risk investment option. In the light of members accepting such a high-risk option, what would happen if we were to have a repeat of the high-tech bust of 18 months ago? They would lose most of their moneys. So much for Labor safeguarding members’ superannuation.

As to the disclosure of fees, there are measures already in place under the FSR package. The government has actively sought to promote the effective disclosure of superannuation fees and charges following on from the enhanced disclosure regime under the Financial Services Reform Act 2001, and recently the government also welcomed research conducted by ASFA on ways to improve consumer understanding of superannuation fees and charges. This has been part of an ongoing collaborative approach that has been taken towards the implementation of the FSR disclosure requirements. I believe Senator Sherry must have been asleep when the government’s financial services reform package was introduced, as it will do the job and it must have time to work.

I now turn to the prohibition of entry and exit fees. There are certainly cases of unconscionable exit fees associated with some older life products, but a prohibition on all entry and exit fees on a one size fits all basis overlooks the costs of disposing of the assets or unpackaging, for example, a bundled master trust type arrangement. I believe that those costs really belong to the member rather than being shared across the membership as a whole.

The ALP wants increased powers and resources to regulators APRA, ASIC, the tax office and the Superannuation Complaints Tribunal. The ALP wants to throw money at regulation without first identifying the need or quantifying the amount of money required. Labor has adopted a reckless approach in relation to fiscal responsibility and I trust that it will not set a precedent for other policy outcomes. Generally, the industry has not been impressed with Labor’s policies on super.

Honourable senators, following last year’s Senate estimates, would have been intrigued by Senator Sherry’s intense questioning of Treasury officers Mr Greg Smith, Mr Brake and Mr Gallagher.

Senator Jacinta Collins—Intense! Forensic!

Senator Watson—Yes, you are familiar with it. Questions ranged from the number of people with super contributions to work done on costings, revised budget estimates, estimates of projections, levels of assumed contributions and reporting on best estimates compared with reportable benefits—all good and appropriate questions. I have no problem with that. But what Senator Sherry did was to set the bar at a standard so high that, in his own area of responsibility, he has failed to match it. What you require of
others, I remind senators opposite, you should be prepared to match in your own policy areas by way of numbers, figures and costings. Senator Sherry, in his questioning of ministers and government officials, has been painstakingly meticulous about the accuracy of costing for programs—yet, with the benefit of seven years of preparation, the opposition have neglected to identify particular issues or cost their superannuation program.

In relation to the Superannuation Safety Amendment Bill, Senator Sherry was reported in the *Canberra Times* as saying it was ‘weak and wimpy’ and had no detail. Perhaps we could turn the criticism around and say that his own policy is ‘weak and wimpy’ and has no detail. Allow me a moment to add some flesh to a couple of skeletons. For example, the ALP has suggested more regulation and more funds for the SCT. But what people really want is the focus. For example, where is there a greater requirement for conciliation with the Superannuation Complaints Tribunal—or the use of community or industry based panels? There is nothing of that sort. The policy is limited to more regulation and more money. Let me look at ASIC. Again the policy is for more regulation and more money. Why don’t we have a suggestion that they give more money to ASIC officers to make their salaries comparable with APRA so as to improve morale and efficiency? *(Time expired)*

**World AIDS Day 2003**

**Senator GREIG (Western Australia)**

(11.12 p.m.)—I regret that at this late hour I do not have Senator Watson’s tremendous enthusiasm or animated persona. On that basis, I seek leave to incorporate my adjournment speech commemorating World AIDS Day for this year.

Leave granted.

*The speech read as follows—*
have any substantive response to the spread and treatment of HIV/AIDS, is currently being spent. While many countries have contributed to the World-wide fund, there is clearly a substantial boost required to meet the enormous costs of prevention and treatment, if we are to have any hope of alleviating the misery and suffering of so many people. The United States has offered US$15billion over 5 years, and Britain announced just last week that it will also contribute to the fund.

Australia on the other hand is lagging behind, having failed to commit anything to the World-wide Fund on the basis that it wants to see the Fund’s success before doing so. This is particularly embarrassing given that less wealthy countries such as Zambia, Cameroon and Burkina Faso have already made contributions, while countries such as Uganda, Niger and Rwanda have made pledges to the fund.

Ongoing wrangling over drug production and supply rights to the Third World, and the impact upon drug prices and availability have been issues of profound concern. It is encouraging to note reports in the Sydney Morning Herald recently, that large pharmaceutical companies have reduced prices for some of the world’s poorest countries, but it is still the case in countries such as Rwanda for example, that up to eighty percent of AIDS treatment is paid for out-of-pocket by the individual.

Although Australia cannot claim to be affected by the HIV virus to the same extent as these poorer neighbours, neither is it true to say that Australia has been immune from the hardship and suffering it creates.

For those personally affected by the slow and agonising deterioration caused by advanced HIV/AIDS infection, there is little relief in the knowledge that comparatively fewer people are affected in Australia. Nevertheless, we have much to be proud of. We are at the forefront of international best practise in our response to the HIV/AIDS pandemic, and amongst the leaders in providing accurate and detailed information, education and medical support services to communities heavily affected by the virus.

The consequence of this effective response is that infection rates have been contained and minimised, but now, after decreasing numbers of new infections for over a decade, HIV infection rates in Australia are again on the increase.

New South Wales and Queensland have for the first time in many years recorded an increased number of notifications. In 2002, NSW recorded its first rise in notifications since 1995—around 15 percent—which is a significant increase by any measure. Even worse, in Queensland in 2002, there was an increase of over 20 percent on the preceding year.

In Victoria too there has been a steady increase in the last few years, in spite of a steady downward trend between 1993 and 2000. The largest increases have been amongst the gay male population in their mid-to-late thirties.

Don Baxter, head of the Australian Federation of AIDS Organisations (AFAO), says while by world standards our infection rate is low, we cannot afford to be complacent. Complacency has been the simplest of all explanations for the recent rise in HIV notifications. Following almost two decades of successful and effective safe-sex campaigns in which gay and homosexually active men have been bombarded by safe-sex messages there is a sense that many may have simply ‘switched off to the message’.

But not only must we take into account negotiated sexual safety decisions that individuals may make, we also need to ensure that message properly targets homosexually active men within a range of sub-communities—those who do not identify as gay, are culturally and linguistically diverse, in custodial settings, socially isolated, men with disabilities, or sex workers.

And of course gay men are not the only population group within Australia at particular risk of HIV infection. I have previously brought attention to the consistent pressure applied by this Government in relation to harm minimisation approaches to drug use, and injecting drug use in particular.

Many Alcohol and Other Drug Sector organisations have been critical of the Government’s over-emphasis on law-enforcement responses to illicit
drug use as evidenced through the Tough on Drugs Policy.

In particular, critics have pointed to increases in funding to law enforcement agencies which have far outweighed increases to support services, such as health and counselling outreach programs and needle/syringe exchanges, all of which are struggling to meet demand.

Health Minister Tony Abbott’s simple assessment on Meet the Press just over a week ago that injecting drug users should just say “no” ignores the enormous complexity of the issue, and mirrors the ineffectiveness of the simple “wear a condom every time” message as a means of restricting HIV infection.

We know that effective harm minimisation strategies are central to maintaining lower levels of HIV infection, educating about safer practices, and ensuring that those at risk are regularly tested. For injecting drug users, syringe exchanges have been a critical element in meeting this aim, and it is crucial therefore that Governments themselves do not become complacent in ensuring these services remain adequately funded. Increased infection rates have resulted I think, from what has been described as a broader developing malaise within the HIV/AIDS sector, a symptom of the Government’s failure to maintain adequate momentum on the National HIV/AIDS Strategy.

The Australian Federation of AIDS Organisations has complained for many years about this flagging momentum. After successfully pressuring the Government for a comprehensive review of the 4th National HIV/AIDS Strategy, (which in turn recommended the development of a 5th National Strategy), the sector was forced to wait for well over a year while the Government withheld the report and failed to respond to its’ recommendations.

Given the scope of the problem worldwide, and the increased infection rates here in Australia, this inaction is inexcusable.

The Government cannot claim, as the Health Minister did yesterday, that this Government is doing all it can to respond to the problem of HIV/AIDS. Indeed the review of the 4th Strategy found leadership by the Commonwealth was lacking.

The recent announcement that the Government substantively accepts the recommendations contained in the Strategy Review is a welcome one, as is the establishment of the new Ministerial Advisory Committee headed by Doctor Wooldridge.

These measures will play a crucial role in overcoming the ground lost in recent years and if the Government is to refocus its response to HIV/AIDS, Hepatitis, and other contagious infections.

In the mean time, I would call upon the Government to give immediate consideration to its’ contribution to the Global fight for HIV/AIDS treatment and prevention, and to take active steps to ensure consistency between portfolio policies, so that harm minimisation approaches which seek to reduce HIV transmission are not undermined by policy decisions in other areas of government.

I would like to take this opportunity to congratulate the staff, members and volunteers of the many HIV/AIDS support, education and prevention organisations around the country, without whose tireless commitment, responsiveness and honesty, HIV/AIDS affected communities would simply not function.

Finally, I wish to formally acknowledge those men, women and children who live with the reality of HIV on a daily basis. I am personally aware of the many ways in which the horror caused by HIV/AIDS has forged communities of strength, courage and resilience. There are a great many people personally affected by this tragedy, and it is for them that we commemorate World AIDS Day.

Senate adjourned at 11.12 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Audio-Visual Copyright Society Ltd (Screenrights)—Report for 2002-03.

Australian Land Transport Development Programme—Progress report for 2002-03.

Australian Public Service Commission—State of the Service—Report for 2002-03.

Australian Rail Track Corporation Limited (ARTC)—Report for 2002-03.


Copyright Agency Limited—Report for 2002-03.

Corporations and Markets Advisory Committee—Report for 2002-03.

Defence Housing Authority—Report for 2002-03.


National Institute of Clinical Studies Limited—Report for 2002-03.


Takeovers Panel—Report for 2002-03.

Treaties—

Bilateral—Text, together with national interest analysis and annexures—Exchange of letters constituting an Agreement between the Government of Australia and the Government of the Italian republic on the Civil Registry Documentation to be Submitted by Australian Citizens Wishing to Marry in Italy, done at Rome on 10 February and 11 April 2000.

List of multilateral treaty action under negotiation, consideration or review by the Australian Government as at December 2003.

Multilateral—Text, together with national interest analysis and annexures—Agreement Establishing an International Foot and Mouth Disease Vaccine Bank, done at London on 26 June 1985. [Withdrawal]

Tabling

The following documents were tabled by the Clerk:

Aged Care Act—

Information Amendment Principles 2003 (No. 1).

Quality of Care Amendment Principles 2003.


The following answers to questions were circulated:

**Treasury: Farm Management Deposit Scheme**

*(Question No. 957)*

**Senator O’Brien** asked the Minister for Revenue and Assistant Treasurer, upon notice, on 21 November 2002:

1. On what date did the Department of the Treasury and/or the Australian Taxation Office (ATO) first become aware that some Farm Management Deposit (FMD) products may not comply with legislation applicable to the Government’s FMD scheme.

2. What was the source of this information; and (b) in what form was this information conveyed, for example, correspondence, e-mail, telephone conversation or direct conversation.

3. What was the nature of the problem specifically identified in this information.

4. On what date did the department and/or the ATO, inform the Treasurer, or his office, or the Assistant Treasurer, or her office, of this problem.

5. Did the Treasurer, or his office, receive advice about this problem from a source other than the Treasurer’s department or the ATO; if so: (a) on what date was this information first received; (b) what was the source of this information; (c) in what form was this information conveyed; and (d) what was the nature of the problem specifically identified in this information.

6. On what date, or dates, did the department and/or the ATO take action in response to this identified problem; and (b) what action did they take.

7. (a) What departments, agencies, banks or non-bank financial institutions did the department and/or the ATO communicate with in relation to this matter; (b) on what date, or dates, did that communication occur; and (c) what form did that communication take.

8. (a) What responses, if any, has the department and/or the ATO received in respect to those communications; (b) in what form have those responses been received; and (c) what was the content of those responses.

9. What action has the department and/or the ATO taken in response to communications from departments, agencies, banks or non-bank financial institutions.

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

1. On or about 18 February 2002, the ATO became aware that certain entities were potentially not complying with legislation applicable to the Government’s FMD scheme.

2. The information was sourced from a representative of a financial institution and conveyed through a telephone conversation.

3. The representative of the financial institution advised the ATO that several institutions offered FMD for an initial period of less than 12 months and requested further information as to whether this was allowable.

4. In February 2002, the ATO determined that action should be taken to obtain documents from the financial institutions containing the terms of the FMD products offered.

On 5 July 2002, tax officers met with a representative from the Australian Bankers Association (ABA). The representative advised that all Term Deposits could be withdrawn at any time and that no particular products had been developed to address the requirements of the FMD regulations. The ATO requested that the ABA provide representative documents relating to the making of an FMD currently in use.
The Minister for Revenue and Assistant Treasurer, and the Minister’s office, were provided briefing and advice on 20 November 2002.

The FMD legislation was amended in December 2002 to address this issue. The amendments allow FMD to be held in accounts of any term, provided the amount is not withdrawn within 12 months from the date of deposit. The requirement that no part of the deposit must be able to be repaid within 12 months was replaced by a rule providing that if any part of the deposit is repaid within 12 months then the deposit will lose its FMD status.

(5) No.

(7) The Treasury Department and the ATO communicated with representatives from the ABA at a meeting on 5 July. The Treasury Department and the ATO also communicated with the Department of Agriculture, Fisheries and Forestry – Australia (AFFA) from mid-July 2001. The communication was in the form of meetings, e-mail and telephone.

(8) As yet no response has been received from the ABA to provide the sample documentation. Co-operation between AFFA and the ATO to administer the scheme continues.

(9) Refer to Question 6.

**Fuel: Ethanol**

(Question No. 1293)

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 19 March 2003:

(1) On what date or dates did: (a) the Minister; (b) the Ministers office; and (c) the department, become aware that Trafigura Fuels Australia Pty Ltd proposed to import a shipment of ethanol to Australia from Brazil in September 2002.

(2) What was the source of this information to: (a) the Minister; (b) the Ministers office; and (c) the department.

(3) Was the Minister or his office or the department requested to investigate and/or take action to prevent the arrival of this shipment by any ethanol producer or distributor or industry organisation; if so: (a) who made this request; (b) when was its made; and (c) what form did this request take.

(4) Did the Minister or his office or the department engage in discussions and/or activities in August 2002 or September 2002 to develop a proposal to prevent the arrival of this shipment of ethanol from Brazil; if so, what was the nature of these discussions and/or activities, including dates of discussions and/or activities, personnel involved and cost.

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

The Government’s policy on biofuels has been clearly stated publicly. In implementing that policy the Government has consulted will all sectors of the industry on a number of occasions.

**Pacific Islands: Global Warming**

(Question No. 1621)

**Senator Brown** asked the Minister representing the Prime Minister, upon notice, on 11 July 2003:

Given Australia’s new interest in helping Pacific ‘friends’, such as the Solomon Islands, and the special concerns of the Pacific island states regarding the potentially disastrous effects upon them of global warming:

(1) Will Australia sign the Kyoto Protocol.
(2) What steps will Australia take to reduce the impact of global warming on Pacific islands.

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

(1) Australia’s position remains that it will not ratify the Kyoto Protocol because the Government believes that it would not be in Australia’s long term interests to do so. The Government does not consider the Kyoto Protocol represents an effective global response to climate change as in the first commitment period major developing country emitters do not face binding emission reduction targets. The United States has made it clear that it will not ratify the Kyoto Protocol. Without the participation of the United States and major developing country emitters such as China and India the Kyoto Protocol will make only a minor difference to global emissions. In addition, the absence of major emitters against which Australia must compete means there are risks for a country such as Australia burdening its own industry with additional costs – including the risk of potential investment in resources or energy-intensive industries moving elsewhere.

Australia does, however, remain committed to addressing climate change and is prepared to achieve its fair share of this task. Australia is within striking distance of meeting the 108 per cent emissions target agreed at Kyoto. The government remains committed to this target and has invested almost one billion dollars in tackling this problem since 1996.

(2) The Government takes extremely seriously the potential vulnerability of Pacific Island countries to the impacts of climate change and climate variability, and seeks an effective global response to these issues. Australia has been working with Pacific countries to improve their management of fragile coastal areas to provide better protection from land erosion and sea intrusion on productive land. Australia also supports a wide range of projects addressing climate-related issues in the Pacific and has put in place a programme with total funding of over $15 million with expenditure in 2002-2003 likely to be almost $5 million. The regional assistance provided by AusAID on climate-related projects includes:

- the South Pacific Regional Environment Program (SPREP), the lead organisation responsible for climate change developments in the Pacific, of which Australia is a major donor. In its Climate Change and Variability Program, SPREP is seeking to improve Pacific Island member countries’ understanding of, and capacity to respond to climate change, climate variability and sea-level rise;
- the South Pacific Applied Geoscience Commission (SOPAC), which has a particular interest in ocean and island ecosystem management, disaster risk reduction and ensuring access to reliable water, sanitation and energy;
- the Sea Level and Climate Monitoring Project, which aims to provide an accurate long term record of sea levels in the South Pacific;
- the Renewable Energy (PREFACE) Project (in cooperation with France), which aims to increase the use of renewable energy in the Pacific, particularly solar and wind technologies;
- the Disaster Management Unit (through SOPAC) which aims to build the capacity of Pacific Island countries to deal with emergencies from extreme weather events;
- support for national meteorological services, such as the provision of training and equipment;
- Vulnerability and Adaptation, a $4 million, 7 year initiative which aims to assist Pacific Island countries adapt to the future impact of extreme weather events and climate change; and
- the Enhanced Application of Climate Prediction in Pacific Island Countries project announced at the 2002 Forum Leaders meeting, which is a $2.2 million, 3-year project to assist Pacific Island countries to cope with the impact of weather extremes and to better understand the threat of climate change.
Further climate change-related assistance has been channelled through the multilateral Global Environment Facility. As part of the negotiations for the third replenishment of the Global Environment Facility, Australia’s contribution was increased to $68.2 million, 58 per cent more than our previous contribution. Based on previous years, it is anticipated that around 40 per cent of this funding will support projects addressing climate change.

**Attorney-General’s: Corporate Branding**

*(Question No. 1715 amended answer)*

Senator Faulkner asked the Minister representing the Attorney-General, upon notice, on 4 August 2003:

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

(1) How was the agency advised of the Government’s revised requirements regarding corporate branding, logos, stationery design etc.
(2) When was that advice provided.
(3) Does the agency propose to adopt the revised requirements, or will the agency be seeking an exemption from these requirements; if the latter, from whom will the agency seek the exemption.
(4) Will the agency be seeking the advice of the Government Communications Unit in the Department of the Prime Minister and Cabinet in relation to these requirements.
(5) What is the expected time frame for the implementation of these revised requirements, if appropriate.
(6) What does this implementation entail.
(7) What is the expected cost of the implementation of these revised requirements, in terms of: (a) expendables, such as stationery; (b) consultancies; (c) software redesign; (d) capital items, such as signage; and (e) any other expected costs.

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

In substitution for parts 7(a) and 7(c) of the answer relating to AUSTRAC which appeared in Hansard page 16453 of Monday 27 October 2003:

7. (a) $15,000
   (c) $8,000

**Australian Federal Police: Investigation**

*(Question No. 1795)*

Senator Greig asked the Minister for Justice and Customs, upon notice, on 15 August 2003:

(1) Did the Australian Federal Police (AFP) ever receive a complaint about the investigation of theft from the Managing Director of Wylkian Pty Ltd, Mr Harold Upton; if so: (a) what was the period of time that elapsed between the complaint being lodged and the complaint being investigated; (b) what was the nature and outcome of the complaint; (c) what was the amount that Mr Upton alleged was stolen from his business; and (d) who conducted the investigation on behalf of the AFP.
(2) Is that investigation considered to be open or closed and for what reasons is it considered as such.
(3) Can the Minister confirm that part of the complaint from Mr Upton included an allegation that certain cheques were stolen from his business; if so: (a) can the Minister confirm whether the investigating officer ascertained whether the cheques were banked and if so, by whom; and (b) can
the Minister confirm whether the identity of the person who banked the cheques and or the account holder, were ever ascertained; if not, why not.

(4) Is the Minister satisfied with the conduct of the AFP in this matter.

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

(1) Yes (a) 29 days (b) The Commonwealth Ombudsman exercised their discretion under Section 24(1)(d) of the Complaints (Australian Federal Police Act) 1981 not to act on this matter as it was before the Supreme Court (c) $67,000 (d) Sergeant Brian McGahey.

(2) The matter is currently closed based on the advice of the Commonwealth Ombudsman that they exercised discretion not to act further at this stage.

(3) Yes (a) a number of cheques were banked and the identity of that person is not yet confirmed (b) the identity of the person is not confirmed and details of the account holder have been obtained. Investigations into this matter are continuing.

(4) The AFP has acted in accordance with their Professional Standards Guidelines and the Complaints (Australian Federal Police) Act 1981. The Ombudsman has agreed that no further action should be taken in relation to this matter under section 24 of the Complaints Act.

Defence: Seaman Jason Solomon

(Question No. 1801)

Senator Nettle asked the Minister for Defence, upon notice, on 19 August 2003:

With reference to the death in 1989 of Seaman Jason Solomon who was found to have ‘died by misadventure’:

(1) Has there ever been a Royal Australian Navy board-of-inquiry held into the death of Seaman Jason Solomon.

(2) Has there ever been a judicial inquiry into the death of Seaman Jason Solomon.

(3) (a) What evidence exists to substantiate that Seaman Jason Solomon’s death was accidental; and

(b) can this evidence be corroborated and verified.

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

(1) No. Seaman Solomon tragically lost his life during his Ship’s port visit to Singapore in 1989.

(2) There is no record of any Australian judicial inquiry into Seaman Solomon’s death. It is not known whether the Singaporean Authorities conducted any Coronial Inquest into Seaman Solomon’s death.

(3) (a) A New Zealand Military Police report concluded that Seaman Solomon died by misadventure from injuries sustained in a fall into a lightwell. The Singaporean Authorities had conducted an autopsy, which concluded that the certified cause of death was from a fractured skull. The autopsy was witnessed by a Royal Australian Navy sailor.

(b) The Singaporean autopsy report is not inconsistent with the findings reported in the New Zealand Military Police report. Notwithstanding the above, there is evidence that he may have been assaulted by a gang of youths within an hour of his death. Navy has requested further information from the Singapore and New Zealand military authorities.

Taxation: Advertising Expenses

(Question No. 1815)

Senator Brown asked the Minister representing the Treasurer, upon notice, on 22 August 2003:

With reference to the modern scourge resource wasting of saturation advertising:
(1) Is it true that tax deductibility exists for corporations for advertising expenses; if so, what is the cap on these tax deductions.

(2) Is it appropriate for the Government to subsidise advertising that promotes poor diets or environmentally-detrimental products such as four-wheel drive vehicles.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator’s question:

(1) Under general principles of income taxation, expenditure incurred in carrying on a business is deductible expenditure. It follows that to the extent advertising is incurred in carrying on a business it would be deductible. This principle has been a feature of Commonwealth taxation law since inception.

(2) See (1) above.

Health: Ultrasound Standards

(Question No. 2017)

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 15 September 2003:

(1) Was the Minister informed that the Commonwealth Scientific and Industrial Research Organisation (CSIRO) National Measurement Laboratory has ceased work on international standards for ultrasound measurement and safety.

(2) Will this work be completed; if so, how.

(3) Was the Minister informed that the CSIRO National Measurement Laboratory has ceased work on the important area of medical metrology; if so, is the Minister concerned about this move given the development of new devices and apparent lack of standards for such devices.

(4) Was the Minister informed that the CSIRO has ceased its work on foetal risks from diagnostic ultrasound when the CSIRO studies suggest there are risks associated with new technology being developed with higher acoustic output; and (b) is the Minister concerned that, despite the fact every pregnant woman who presents to a doctor will have an ultrasound, very little work is now being done on the safety standards of this technology; if so, what action is proposed to address this issue.

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

(1) A letter from the Australasian Society for Ultrasound in Medicine (ASUM) was sent to the Commonwealth Scientific and Industrial Research Organisation (CSIRO) National Measurement Laboratory on 22 May 2003, with a copies sent to the former Minister for Health and Ageing, the Minister for Science and the CSIRO Chief of Telecommunications and Industrial Physics. The letter was forwarded by the former Minister’s Office directly to the Department for information and was not provided to the former Minister.

(2) The CSIRO advised that the National Measurement Laboratory will continue to maintain the standard for power ultrasound measurement after it becomes part of the National Measurement Institute in July 2004.

(3) The former Minister was not informed. The CSIRO has advised that the National Measurement Laboratory has engaged a scientist on a part time basis over the past 18 months to investigate the needs and opportunities for metrology and measurement traceability in medicine. Further investigation of the needs in this field has been deferred pending the establishment of the new National Measurement Institute in July 2004.

(4) (a) The former Minister was not informed; (b) I am advised by the CSIRO that the National Measurement Laboratory will continue to maintain a standard for ultrasound power measurement.

QUESTIONS ON NOTICE
after it becomes part of the National Measurement Institute in July 2004. There are also a number of national and international bodies that continue to undertake work in relation to possible foetal risks from diagnostic ultrasound. Additionally, the ASUM is active in formulating policies for the safe use of diagnostic ultrasound in Australia and draws its knowledge and expertise from both the local and international community.

Note Printing Australia Ltd
(Question No. 2115)

Senator Carr asked the Minister representing the Treasurer, upon notice, on 16 September 2003:

With regard to issues of management, restructuring and Occupational Health and Safety (OH&S) at the Note Printing Australia Ltd plant at Craigieburn, Victoria:

(1) (a) Did the company employ an independent investigator, Co Solve, to investigate employee allegations of bullying, intimidation and harassment; and (b) did that investigation find that a senior staff member and a consultant, driving a change program within the organisation, have a case to answer.

(2) Can a copy of that report be provided.

(3) How much money has the company paid to the change program consultant, Caroline Shabaz and her associates, during the past 3 years.

(4) Is Caroline Shabaz now suing Note Printing Australia Ltd; if so: (a) what are the grounds for her claim; and (b) what amount of money is she seeking.

(5) Has anyone else commenced legal action against Note Printing Australia Ltd over these matters.

(6) (a) What has been the total cost to the company, over the past 3 years, in hiring consultants in the areas of: (i) change management, (ii) OH&S, and (iii) organisational restructuring; and (b) in relation to each consultancy: (i) who was the consultant, (ii) what was the duration of their contract, and (iii) what was the total remuneration and expenses paid to them.

(7) Can full details be provided of the process that was used for the employment of each of these consultants.

(8) (a) What evaluation of the effectiveness of each of these consultancies has been made by the company; and (b) can a copy of each of these evaluations be provided.

(9) Have any of these consultants subsequently been appointed to management positions within the company; if so: (a) how many and who; (b) were public service guidelines followed in all such appointments; and (c) were the positions advertised.

(10) (a) Is it correct that the company has had 3 human resources managers in the past 2 years; and (b) were any of these internal appointments or promotions; if so, what appointment guidelines were followed in each case: (i) what were the selection criteria, (ii) what qualifications were identified for the position, and (iii) was the position advertised.

(11) What are the total legal costs to date incurred by the company in relation to issues arising from proposed restructuring and the consequent allegations.

(12) Does Note Printing Australia Ltd have a current business plan and a plan for restructuring; if so, can copies of these be provided.

(13) Has any analysis of the possible sale of Note Printing Australia Ltd been undertaken; if not, has the company's board ever considered this matter.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator’s question:
(1) (a) The management of Note Printing Australia Limited (NPAL) and the Joint Union Working Group at NPAL together commissioned a confidential report from CoSolve on such allegations.  
(b) The investigation produced several findings which have been, and in some cases continue to be, the subject of management/staff consultation and follow-up action.

(2) The report is a confidential document containing, inter alia, sensitive material relating to various individuals. Privacy and other procedural fairness considerations preclude its publication. Issues raised in the report are currently being addressed cooperatively and constructively by management and staff.

(3) Over the past three years a total of $804,389 has been paid by NPAL to Caroline Shahbaz and two of her associates for a range of consultancy services.

(4) There is no litigation commenced against NPAL by Caroline Shahbaz

(5) No.

(6) (a) Total cost over 3 years:
   (i) Change management - $508,751
   (ii) OH&S - $108,515
   (iii) Organisational restructuring - $28,600

(6) (b) (i) Consultants -
   Change management - C Shahbaz
   - D Smith
   OH&S - Richard Oliver International P/L
   - Safety Action P/L
   Organisational restructuring - C Shahbaz

(ii) Duration of contracts –
   No fixed duration – consultants have been engaged on a project by project basis

(iii) Total paid -
   Change management - C Shahbaz - $429,909
   - D Smith - $78,843
   OH&S - Richard Oliver Intl P/L - $35,956
   Safety Action P/L - $72,919
   Organisational restructuring - C Shahbaz - $28,600

(7) Consultants were selected on the basis of relevant experience and capacity to meet NPAL’s requirements in each case.

(8) Evaluation methods varied depending on the type of work being performed. In some cases a clear outcome was identifiable, for instance the running of specific pre-agreed training sessions. In other cases effectiveness was assessed through the annual Staff Survey.

(9) No.

(10) (a) Yes
   (b) One appointment was an internal promotion.

   (i) Selection criteria for this appointment were based on knowledge of the organization and the qualifications identified as important for job.
(ii) Qualifications included interpersonal skills, understanding of NPAL’s culture and business requirements, communication and presentation skills, and abilities in planning, organizing and coordination.

(iii) The position was not advertised because the internal nominee was well-known to senior management and was assessed as having the required qualifications.

(11) Legal costs associated with industrial action and representations to the Industrial Relations Commission and other advice have been $152,509.

(12) NPAL has a business plan covering all aspects of its operations. In addition to printing currency notes for the Reserve Bank of Australia, NPAL carries out research into note security and conducts an export sales and manufacturing business in a highly competitive international market. It would be potentially very damaging to its activities if its business plan became public.

(13) No.

Intellectual Property Enforcement Consultative Group
(Question No. 2202)

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 9 October 2003:

With reference to the intellectual property enforcement consultative group that was an outcome of the report, Cracking Down on Copycats, the Enforcement of Copyright in Australia:

(1) How many times has the above mentioned group met since its establishment.

(2) Who are the members of the consultative group and what state are they from.

(3) What were the selection criteria for the consultative group.

(4) Where does the group meet.

(5) Are expenses or travelling allowance paid for meetings; if so, how much.

(6) Are any members of the group employed by a legal firm which is already in receipt of federal government contracts for copyright issues.

(7) What findings, reports or issues has the group developed for consideration.

(8) Can the minutes of the group’s meetings be made available.

(9) Have any prosecutions resulted from the work of the group; if so, how many

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

As background, the Intellectual Property Enforcement Consultative Group (the Consultative Group) operates under the leadership of the Australian Federal Police. Following the release of the Copycats report, the Australian Federal Police organised a national Critical Issues Workshop in June 2001 to examine evidence given to the inquiry about organised criminal involvement in intellectual property crime. The Consultative Group was established following that Workshop. Meetings are chaired by the Australian Federal Police, consistently with the recommendations in the Copycats report.

(1) Seven.

(2) Representatives of the following departments, agencies and organisations have attended all or most meetings of the Consultative Group:

* Commonwealth Government:
  * Australian Federal Police (Chair)
  * Attorney-General’s Department
  * Australian Customs Service
  * IP Australia
Commonwealth Director of Public Prosecutions
State Government:
Victoria Police
Copyright industry interests:
Anti-Counterfeiting Action Group
Australian Subscription Television & Radio Association
Interactive Entertainment Association
Business Software Alliance & Business Software Association of Australia
Music Industry Piracy Investigation
Sony Computer Entertainment Australia
Trade Mark Investigation Services
Australian Toy Association Ltd
Australian Film and Video Security Office
Representatives from the following bodies attended initial meetings of the Group:
Australian Bureau of Criminal Intelligence
National Crime Authority
Australian Institute of Criminology
New South Wales Police
Queensland Police
South Australian Police

(3) Membership of the Consultative Group is open to all relevant and interested government and industry bodies. In some cases a significant element or player in an industry that did not already have a representative was invited to attend.

(4) The Consultative Group does not meet in any particular place. Various members of the Group have hosted the meetings to date. Three meetings have been hosted in both Canberra and Sydney and one in Melbourne.

(5) Industry participation in the Consultative Group is at its own expense. Where there are travel expenses for Commonwealth officers to attend a meeting these are met by the respective Commonwealth department or agency in accordance with usual practice.

(6) I am not aware that any members of the Consultative Group are employed by a legal firm which is already in receipt of Federal Government contracts for copyright issues.

(7) The Consultative Group is providing a regular forum for information exchange between participants on matters of mutual interest, including recent intellectual property enforcement actions by police and Customs, and industry enforcement activities. The forum is also used to inform those present of relevant international developments including regional cooperation activities as well as domestic developments relevant for intellectual property enforcement.

The Consultative Group developed a Crime Management Strategy as a tool for guiding its work. In addition, the Commonwealth Director of Public Prosecutions has prepared a comprehensive guide to trade mark prosecutions to assist investigators and prosecutors. The Group also maintains contact lists to assist cooperation between industry and police and Customs.

(8) The records of meeting prepared and circulated following meetings of the Consultative Group are prepared for the benefit of those who participated in the meeting. These records are not intended for circulation beyond the Consultative Group. To date the Consultative Group has benefited from the open and frank discussion of matters. Consultative Group Members may not participate as fully
or openly at meetings if they thought that the record of the meeting could be circulated more widely or made public through a Parliamentary process. This would ultimately make the Consultative Group less effective than it may otherwise be.

(9) The Consultative Group does not meet for the purpose of furthering investigation of particular cases of IP enforcement. Information about individual cases is exchanged directly between industry investigators and law enforcement agencies. The operation of the Consultative Group facilitates direct contact and communication. However, the Group does examine recent enforcement action, including investigations, prosecutions and litigation, as a means of sharing information and views on ways of improving practical cooperation, and more generally, the effectiveness of criminal remedies. The existence of the Group has also enhanced the profile of intellectual property enforcement and this may have impacted the prosecution rate in both Commonwealth and State jurisdictions.

Treasury: Paper and Paper Products
(Question No. 2245)

Senator O’Brien asked the Minister representing the Treasurer, 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 Minchin—The Treasurer has provided the following answer to the honourable senator’s question:

(1) Treasury’s expenditure on paper and paper products for the financial year’s 2001/02/03 is as follows: (a) 2001 – 02 $105,000, and (b) 2002 – 03 $104,000.
(2) The countries of origin that Treasury has sourced paper and paper products (over both financial years) are Australia, China, United States of America, Indonesia, Singapore and Korea.
(3) Treasury has sourced paper and paper products, over both financial years, from Corporate Express Australia Limited.
(4) Treasury is not able to provide a breakdown of paper and paper products sourced by the Department by country, given the diverse nature and the variety of paper products.
(5) The percentage of paper and paper products sourced by the Department by company for the financial years 2001/02/03 is as follows: (a) 2001-02 90% ($94,000) from Australia and 10% ($10,500) from China, United States of America, Indonesia, Singapore and Korea. (b) 2002-03 90% ($93,600) from Australia and 10% ($10,400) from China, United States of America, Indonesia, Singapore and Korea.
The Treasury procurement and tender processes require that all procurement accords with the Commonwealth Procurement Guidelines. Staff are required to be aware of any relevant environmental legislation and targets set by the Commonwealth. Matters affecting the environment are taken into account when formulating requirements relating to procurement and similarly where relevant environmental criteria is included in specifications and requests for tender documentation.

### Medicare: Bulk-Billing

**(Question No. 2314)**

**Senator Nettle** asked the Minister representing the Prime Minister, upon notice, on 21 October 2003:

With reference to the Prime Minister’s statement during his interview with Neil Mitchell on Radio 3AW on 25 September 2003, that ‘there should be adequate levels of bulk billing’:

1. (a) What level of bulk billing does the Prime Minister consider to be adequate; and (b) how will the Government’s ‘Fairer Medicare’ package achieve this.

2. Does the Prime Minister believe that bulk billing should not be universally available; if so, then which members of the Australian community should have access to bulk billed health services; if not, how does the Government propose to achieve this goal.

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

1. (a) and (b) The Government remains committed to a high level of bulk billing as a key element of the Medicare system. The current levels of bulk billing vary enormously throughout Australia. As acknowledged by the Senate Select Committee on Medicare report, Medicare – healthcare or welfare? “Declining doctor numbers have critical implications for current and future access to primary health care, both from outright shortages and the increasing pressure on prices caused by short supply and high demand. These factors are both evident in the falling bulk-billing rates.” [page xii] Areas that have very high levels of bulk billing are found to have more doctors. Areas that have low levels of bulk billing generally have far fewer doctors. The government cannot compel a particular level of bulk billing. However, through MedicarePlus the government will increase the supply of doctors and other health professionals, provide additional incentives for doctors to bulk bill, provide more convenient rebate claiming and provide a new national safety net to cover out-of-pocket medical costs incurred outside hospital for all Australians. This will protect and strengthen Medicare to meet the challenges of future health care delivery.

2. Bulk billing should remain, as it has always been, a matter between doctors and patients. The government has not placed any restrictions on bulk billing. Every doctor continues to have the right to choose which patients they bulk bill. It has never been a guarantee of Medicare that there would be 100 per cent bulk billing. As Dr Blewett said, in his address to the Doctors’ Reform Society on 26 August 1983, “Where a doctor agrees, direct billing will be available to everyone, so that the patient does not have to claim a refund for the cost of medical treatment. But this is a choice left to the doctors.” Dr Blewett went on to say “Doctors will be free to choose their method of billing, although the government would be encouraging them to especially direct bill pensioners, the unemployed and other low-income patients, as well as the chronically ill.” Under MedicarePlus the government’s new $5 payment for bulk billed services provided to concession card holders and children under sixteen years will provide an additional incentive for doctors to bulk bill these patients. However, as has been the case since the beginning of Medicare, doctors can choose to bulk bill any patients. This remains government policy under MedicarePlus.
Defence: Point Nepean
(Question No. 2323)

Senator Chris Evans asked the Minister for Defence, upon notice, on 23 October 2003:

With reference to the decision to abandon the sale of the remaining 90 hectares of Defence land at Point Nepean:

(1) When and on what basis was this decision taken.
(2) (a) Who made this decision; and (b) if the decision was taken within Defence, by whom.
(3) Did Defence consult with the Victorian Government or relevant local council about this decision; if not, why not; if so, what was the nature of this consultation.
(4) How many organisations and individuals had submitted bids to buy the 90 hectares of land.
(5) What was the range of bids for the land.
(6) (a) Have any of the organisations or individuals that submitted bids approached the Commonwealth seeking any form of compensation for costs incurred as a result of the Commonwealth’s decision to abandon the sale process; and (b) is this expected to occur in the future.
(7) (a) Has the Commonwealth offered any of the organisations or individuals that submitted bids any form of compensation for costs incurred; and (b) is this expected to occur in the future.
(8) Has the Commonwealth received any legal advice about whether it would be open to any of the bidders to claim compensation; if so, can a copy of this advice be provided.

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

(1) and (2) The Government decided to close the freehold expression of interest process in recognition of the site’s unique environmental and heritage values. It had become apparent in the evaluation of the expressions of interest, and also through the community consultation process, that a high level of heritage protection was required to protect the heritage values of the site. The decision was announced on 25 August 2003 by the Parliamentary Secretary to the Minister for Defence, the Hon Fran Bailey MP.

(3) No. As the landowner for the property, this was a matter for the Commonwealth (Defence).

(4) and (5) For confidentiality and probity reasons, Defence is not able to disclose the identity of bidders, or details of their proposals.

(6) (a) and (b) No.

(7) (a) and (b) No.

(8) Yes. Copies of the advice will not be provided.

Defence: Point Nepean
(Question No. 2324)

Senator Chris Evans asked the Minister for Defence, upon notice, on 23 October 2003:

With reference to the announcement of the Point Nepean Community Group and FKP Limited Consortium (the consortium) as the preferred tenderer for the 90 hectare portion of the Defence land at Point Nepean:

(1) How many organisations and individuals responded to the request for tender issued by the Commonwealth.
(2) Can a list be provided of the names of these individuals and organisations that responded.
(3) In to what range did bids from the unsuccessful tenderers fall.
(4) How much was the winning bid.
(5) Has the Point Nepean site been valued by the Victorian Valuer-General, the Australian Valuation Office, or any private valuer at any time in the past 5 years; if so, when and what was the estimated value.

(6) On what basis was the consortium announced as the preferred tenderer.

(7) (a) Who made this decision; and (b) if this decision was taken within Defence, by whom.

(8) Was there any consultation with the Victorian State Government or the local council regarding this decision; if not, why not; if so, what was the nature of this consultation.

(9) What are the main terms of the lease for the Point Nepean land, for example, length of lease, any options, rent or lease conditions.

(10) When will negotiations with the preferred tenderer for the Point Nepean land be finalised.

(11) How does the preferred tenderer plan to use the site.

(12) (a) Is the site subject to Victorian environmental and planning laws; and (b) has Defence received any legal advice in relation to this issue; if so, can a copy of this advice be provided.

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

(1) (2), (3) and (4) For confidentiality and probity reasons, both of which seek to protect the commercial and other interests of the bidders and the robustness of the decision-making process, Defence is not able to publicly disclose details of the proposal while in negotiations towards finalisation of the proposal.

(5) Yes. The two most recent valuations of the site occurred on 2 October 2003 and 8 January 2003. Both valuations were conducted by m3 property strategists. Details of the site valuations are commercial-in-confidence until the property disposal transaction is completed.

(6) The decision-maker selected the preferred tenderer on the basis of tender submitted in response to the request for tender for the leasehold of the site.

(7) (a) and (b) The decision as to the selection of the preferred tender was made by the Minister for Defence.

(8) No. As the landowner for the property, this was a matter for the Commonwealth (Defence).

(9) As outlined in the tender documents that were publicly available via the Defence website from 11 September 2003, the lease period is 40 years, with a 10 year option. Rent is $1 per annum, with the lease premium to be paid upfront. The lease includes strict conditions to enshrine public access, protect the environment, conserve the heritage value and ensure a demonstrated benefit to the community.

(10) The Australian Government is currently in negotiations with the preferred tenderer, having allowed an extra month for negotiations to be completed because of the complexity of the issue.

(11) As announced by the Parliamentary Secretary on 18 October 2003, the consortium plans a range of integrated uses for the site including education, heritage precincts, rescue services, conservation, conference and tourist accommodation, parkland and community uses.

(12) (a) and (b) Defence has been consistently advised that the current position in Victoria is that State planning laws do not apply to Commonwealth land, whether or not it is leased. Copies of the advice will not be provided.

Security and Intelligence: Aluminium Tubes

(Question No. 2334)

Senator Bartlett asked the Minister for Defence, upon notice, on 29 October 2003:
(1) Were the aluminium tubes that were alleged to have been shipped from China to Jordan in May 2001 shown to representatives of the Australian Security Intelligence Organisations, the Defence Intelligence Organisation and/or the Office of National Assessments in Canberra in late 2001.

(2) Has the Defence Science and Technology Organisation (DSTO) undertaken any analysis in the past 3 years of the likely purpose of aluminium tubes; if so, what were their findings.

(3) Did DSTO assess the possibility that the aluminium tubes were intended to be rotors in a gas centrifuge program to produce enriched uranium; if so, what were their findings?

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

(1) Australian authorities were shown an aluminium tube in August 2001, but it was not specifically identified as being from the alleged shipment from China to Jordan.

(2) No.

(3) No.

Treasury: Alternative Dispute Resolution

(Question No. 2336)

Senator Ludwig asked the Minister representing the Treasurer, upon notice, on 3 November 2003:

With reference to Financial Services Legislation:

(1) Is Alternate Dispute Resolution (ADR) utilised within the department; if not, why not.

(2) Have guidelines been developed for the use of ADR; if so, can a copy be provided; if not, why not.

(3) If guidelines for the use of ADR are in place, who was primarily responsible for the development of these guidelines.

(4) How and when is ADR used in the department.

(5) Can details be provided of instances in which ADR has been used.

(6) Where do ADR appointments take place.

(7) (a) Who is the primary person overseeing the use of ADR in the department; and (b) what training has this person received in ADR procedures.

(8) What benefits were gained by the department as a result of using ADR.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator’s question:

(1) No; as prudential and market regulators make decisions and implement policy with respect to financial services regulation, there is no provision for Alternate Dispute Resolution (ADR) to be utilised within the department, with reference to that legislation.

(2) No.

(3) Not applicable.

(4) Refer to (1), above.

(5) No.

(6) Not applicable.

(7) (a) Not applicable; (b) not applicable.

(8) Not applicable.
Transport and Regional Services: Alternative Dispute Resolution

(Question No. 2341)

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

(1) The Department has ADR provisions in its standard form contracts and grant agreements and other non standard agreements. In relation to litigation the Department must comply with the Legal Services Directions issued by the Attorney-General pursuant to section 55ZF of the Judiciary Act 1903. Appendix B entitled “Directions on the Commonwealth’s Obligation to Act as a Model Litigant” includes the direction to avoid litigation wherever possible. The Department will use ADR where appropriate and advised to do so by its legal advisers. The Department has no specific guidelines to follow when using ADR.

(2) See response to question (1).

(3) No.

(4) (a) No. (b) Not applicable.

Treasury: Alternative Dispute Resolution

(Question No. 2342)

Senator Ludwig asked the Minister representing the Treasurer, 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 Minchin—The Treasurer has provided the following answer to the honourable senator’s question:

(1) Yes. The Department has various ADR guidelines in place; these include grievance provisions under the Australian Public Service Act (Regulations) and the Treasury Certified Agreement. ADR provisions are also included in all standard Treasury goods and services contracts.

(2) N/A
(3) The Department is aware that ADR guidelines are being prepared by the National Alternative Dispute Resolution Advisory Council (NADRAC).

(4) (a) and (b) This information is not readily available within the Department. The NADRAC has advised that it is in the process of completing a database of Commonwealth legislation that incorporates ADR provisions.

**Foreign Affairs and Trade: Alternative Dispute Resolution**

**(Question Nos 2343 and 2345)**

**Senator Ludwig** asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 3 November:

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 Minister for Foreign Affairs on behalf of the Minister for Trade and himself have provided the following answer to the honourable senator’s question:

1. Yes. The Department follows the Legal Services Directions issued by the Attorney-General pursuant to s 55ZF of the Judiciary Act 1903. Under these Directions the Department is required to act as a model litigant and to endeavour to avoid litigation, wherever possible.
2. Not applicable.
3. No
4. Yes
   
   (a) Chemical Weapons (Prohibition) Act 1994 s 27
   Export Expansion Grants Act 1978 s 17
   Export Market Development Grants Act 1997 s 97
   Intelligence Services Act 2001 s 37
   Nuclear Non-Proliferation (Safeguards) Act 1987 s 22
   Papua New Guinea (Staffing Assistance) Act 1973 s 54
   Passports Act 1938 s 11A
   Registration of Deaths Abroad Act 1984 s 27
   NB We have not included references to sub-ordinate legislation
   
   (b) The Department has guidelines for use of ADR procedures under s 37 of the Intelligence Services Act 2001. The Department does not intend to make the guidelines publically available.

   The Department does not have guidelines in relation to the provisions in other legislation administered by the Department (listed above). In resolving disputes, including in the conduct of internal reviews of administrative decisions, the Department follows the Legal Service Directions issued by the Attorney-General pursuant to s 55ZF of the Judiciary Act 1903.
Iraq
(Question No. 2381)

Senator Brown asked the Minister for Defence, upon notice, on 17 November 2003:
Have any Australian personnel who were directly or indirectly seconded to another country’s military, police or security forces (including United States forces) been killed or injured in direct fire, helicopter crashes or in any other way in Iraq in 2003.

Senator Hill—The answer to the honourable senator’s question is as follows:
No.