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

PETITIONS

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

Education: Higher Education

To the Honourable President and Members of the Senate in Parliament assembled.
The Petition of the undersigned draws to the attention of the Senate concerns that proposed changes to the tertiary education sector will negatively impact on higher education campuses. Your petitioners oppose:
(a) any increase in HECS;
(b) any increase in the number of domestic full-fee paying students at university;
(c) loans for full-fee paying students of up to $50,000 which bear 3.5% interest above inflation;
(d) a 5 year time limit for degree completion, with penalties for failing subjects or changing courses;
(e) the reduction of student, staff and community representation on university governing councils;
(f) forcing universities to dismantle collective bargaining for staff by tying university funding to Australian Workplace Agreements (AWAs);
(g) restrictions of the right of university staff to take legitimate industrial action in contravention of International Labour Organisation (ILO) conventions.

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

by The President (from 116 citizens).

Media Standards

To the Honourable President and Members of the Senate in Parliament assembled.
The petition of the undersigned draws to the attention of the Senate their concern regarding the current inappropriate levels of coarse language, nudity and blasphemy in the media.

Your petitioners therefore ask the Senate to initiate legislation that would tighten laws relative to censorship, particularly in the above named categories. The viewing of such out-of-control behaviour in speech and sexual activity should be severely restricted on movie and television screens.

And your petitioners as in duty bound, will ever pray.

by Senator Sherry (from 435 citizens).

Petitions received.

ENVIRONMENT: LIST OF THREATENED SPECIES

Senator TCHEN (Victoria) (9.31 a.m.)—Last Thursday, while withdrawing business of the Senate notice of motion No. 1 for the disallowance of the Inclusion of Species in the List of Threatened Species made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 and gazetted on 6 August 2003, I made a short statement to the chamber concerning this instrument. That statement contained certain information which has been found to be incorrect. I seek leave to make a further statement.

Leave granted.

Senator TCHEN—My statement referred to the difficulties the Senate Standing Committee on Regulations and Ordinances had experienced in persuading the department to put the committee’s correspondence before the Minister for the Environment and Heritage for his personal consideration. Mr President, since my statement to the Senate, the committee has become aware that the minister did indeed respond personally to our
concern. The committee has now received a faxed file copy of the minister’s response on this instrument dated 11 November. It is unfortunate that neither the secretariat nor my office had any record of having received the original of this letter, as it would have avoided the need to make a statement and therefore avoided embarrassment to the minister, the committee and the department. I seek leave to incorporate the minister’s letter.

Leave granted.

The document read as follows—

Senator Tsebin Tchen
Standing Committee on Regulations and Ordinances
Parliament House
Canberra ACT 2600
Dear Senator Tchen
Thank you for your letter of 11 September 2003 about an instrument for the inclusion of lungfish in the List of Threatened Species under Section 178 of the Environment Protection and Biodiversity Conservation Act 1999.

I appreciate you bringing to my attention the inadvertent typographical error in the instrument concerning the lungfish. A draft instrument was initially prepared in late 2002, with the approval process to be completed some time later. The date of my signature was the 4th of March 2003.

Yours sincerely
David Kemp

In conclusion, I reiterate the comments that I made last Thursday. The committee has had an excellent working relationship with Minister Kemp, who has made it his practice to promptly and personally respond to all the committee’s correspondence. It is something that the committee appreciates and which has assisted it in its work. Clearly, Minister Kemp responded on this occasion as well, and I thank him for that and apologise if my statement caused him any embarrassment. It is just unfortunate that the committee was not aware that he had responded.

NOTICES
Presentation
Senator Conroy to move on 12 February 2004:

Senator Brown to move on the next day of sitting:
That the Senate calls on the Howard Government and the Latham Opposition to protect the north-east peninsula of Recherche Bay in Tasmania from logging, to protect its cultural landscape, which was extensively traversed by scientists from the D’Entrecasteaux expeditions in 1792 and 1793 and is the site of their marvellous meetings with the local Aboriginal people.

BUSINESS
Rearrangement
Senator HILL (South Australia—Minister for Defence) (9.34 a.m.)—I move:
That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:
No. 9 Aboriginal Land Grant (Jervis Bay Territory) Amendment Bill 2003
No. 10 Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002
No. 11 Customs Legislation Amendment Bill (No. 2) 2003 Designs Bill 2003

Question agreed to.

Rearrangement
Senator FERRIS (South Australia) (9.35 a.m.)—by leave—At the request of Senator Brandis, I move:
That business of the Senate order of the day no. 3, relating to the presentation of the report of the committee on the provisions of the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003, be postponed till a later hour.

Question agreed to.

COMMITTEES
Legal and Constitutional Legislation Committee
Reference
Senator Nettle (New South Wales) (9.35 a.m.)—I move:

Question agreed to.

REGIONAL ARTS FUND
Senator Brown (Tasmania) (9.36 a.m.)—by leave—I move the motion as amended:
That the Senate—
(a) notes that:
(i) the current Deed of Grant for the Regional Arts Fund expires on 30 June 2004 and that the fund can not operate properly in 2004 without an immediate commitment from the Government, and
(ii) more than one million people in regional Australia have participated in the funds’ programs and that almost 2 300 artists have gained employment through the scheme; and
(b) calls on the Government to immediately commit to establishing the Regional Arts Fund as a permanent recurrent fund with an appropriate allocation of funds.

Question agreed to.

DEPARTMENTAL AND AGENCY CONTRACTS
Senator Forshaw (New South Wales) (9.37 a.m.)—I move:
That the order of the Senate of 20 June 2001, as amended on 27 September 2001, 18 June 2003 and 26 June 2003, for the production of documents relating to departmental and agency contracts, be amended as follows:

Paragraph (5), omit “within 6 months after each day mentioned in paragraph (1)”, insert “by not later than 30 September each year”.

Question agreed to.

AUSTRALIAN CRIME COMMISSION AMENDMENT BILL 2003
AUSTRALIAN FEDERAL POLICE AND OTHER LEGISLATION AMENDMENT BILL 2003
FISHERIES LEGISLATION AMENDMENT (COMPLIANCE AND DETERRENCE MEASURES AND OTHER MATTERS) BILL 2003
NORFOLK ISLAND AMENDMENT BILL 2003
First Reading
Senator Hill (South Australia—Minister for Defence) (9.38 a.m.)—I move:
That the following bills be introduced:
A bill for an act to amend the Australian Crime Commission Act 2003, and for related purposes.
A bill for an act to integrate the Australian Protective Service into the Australian Federal Police, and for other purposes.
A bill for an act to amend legislation about fisheries, and for related purposes.
A bill for an act to amend the law relating to Norfolk Island, and for related purposes.

Question agreed to.

Senator Hill (South Australia—Minister for Defence) (9.38 a.m.)—I move:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator HILL (South Australia—Minister for Defence) (9.38 a.m.)—I table revised explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted

The speeches read as follows—

AUSTRALIAN CRIME COMMISSION AMENDMENT BILL 2003


In April 1992 the Commonwealth and the States and Territories agreed to replace the National Crime Authority with a new body with a strong focus on national criminal intelligence needs.

The agreement recognised that serious and organised crime cuts across jurisdictional boundaries and needs to be addressed at a national level.

The new body, the Australian Crime Commission, was established by Commonwealth legislation on 1 January 2003.

Since then practical experience and the drafting of corresponding State legislation have revealed a need for some minor adjustments to the Australian Crime Commission Act.

This bill will address this need so as to ensure there is a fully workable legislative framework in place to enable the Australian Crime Commission to effectively combat serious and organised crime across Australia.

The bill adds provisions to the current legislation to ensure that State laws can more effectively enable the Australian Crime Commission to deal with State offences.

The bill also facilitates an effective transition from the National Crime Authority to the Australian Crime Commission by addressing transitional issues that have arisen since the establishment of the Australian Crime Commission.

The bill demonstrates the Government’s continuing commitment to combating serious and organised crime in this country through cooperation with the States and Territories.

AUSTRALIAN FEDERAL POLICE AND OTHER LEGISLATION AMENDMENT BILL 2003

This bill, the Australian Federal Police and Other Legislation Amendment Bill 2003, contains amendments to the Australian Federal Police Act 1979 and the Crimes Act 1914.

The bill represents the final stage of the integration of the Australian Protective Service into the Australian Federal Police and will implement an important resolution of the April 2002 Leaders’ Summit on Terrorism and Multi-jurisdictional Crime.

The Australian Protective Service was established by the Australian Protective Service Act 1987 and is the Commonwealth’s pre-eminent provider of protective security services.

Protective service officers provide a first response security role at airports, diplomatic and consular premises, Defence establishments and other Commonwealth buildings.

Following the Cornall Review in 2001, the Government determined that the Australian Protective Service should transfer from the Attorney-General’s Department to the Australian Federal Police.

Stage one of this transfer occurred on 1 July 2002 when legal and financial responsibility for the Australian Protective Service transferred to the Australian Federal Police.

The employment framework of the Australian Protective Service was not affected by stage one and the Australian Protective Service and Australian Federal Police have continued to operate
under separate legislative and employment arrangements.

The Australian Federal Police Act 1979 sets out the functions of the Australian Federal Police, and the powers and duties of AFP employees.

The Australian Protective Service Act 1987 sets out the functions of the Australian Protective Service, and the powers and duties of protective service officers and special protective service officers.

In addition, Australian Protective Service employees are public service employees within the meaning of the Public Service Act 1999.

The final stage of the transfer involves the creation of a new category of employee (that is, protective service officer) in the Australian Federal Police Act and the inclusion of the protective service function of protective service officers as a function of the Australian Federal Police.

The Australian Protective Service Act will be repealed.

The transfer of Australian Protective Service employees to the Australian Federal Police will be effected by section 72 of the Public Service Act 1999, which provides that the Public Service Commissioner may determine that Public Service employees cease to be Public Service employees, and become employees of a specified Commonwealth authority.

All Australian Protective Service employees transferred to the Australian Federal Police will be entitled to remuneration and other conditions of employment no less favourable than those which applied under existing industrial instruments immediately before the transfer.

Protective service officers currently carry out functions and exercise powers under a range of other Commonwealth Acts and the bill also makes consequential amendments to those Acts to ensure protective service officers can continue to carry out such functions and exercise such powers.

The bill also implements a resolution of the April 2002 Leaders’ Summit.

Leaders committed to legislate and develop administrative arrangements to enable the Australian Federal Police to investigate State offences incidental to multi-jurisdictional crime.

The Standing Committee of Attorneys-General and Australasian Police Ministers’ Council Joint Working Group on National Investigative Powers recommended that this resolution be implemented by amending Commonwealth legislation to enable the Australian Federal Police to investigate State offences with a federal aspect.

A State offence has a federal aspect if the subject-matter of the offence is a subject on which the Australian Government has constitutional power to legislate.

A State offence also has a federal aspect where the investigation of that State offence is incidental to an investigation of a federal or Territory offence.

In investigating federal crimes such as terrorism, people smuggling, drug importation and child sex tourism, it can become apparent that State offences may also have been committed.

These measures will allow the Australian Federal Police to investigate the totality of criminal conduct where those State offences have a federal aspect and will address the potential duplication of police resources that arises where otherwise the Australian Federal Police and State police services would need to investigate different aspects of the same criminal conduct.

FISHERIES LEGISLATION AMENDMENT (COMPLIANCE AND DETERRENCE MEASURES AND OTHER MATTERS) BILL 2003

The Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Bill 2003 is the second part in a package of amendments to the Fisheries Management Act 1991 (the Act) that has been developed by the Howard Government.

It reinforces the Government’s efforts to put in place a more effective deterrence and compliance regime, improve the operating efficiency and effectiveness of AFMA and promote the ecologically sustainable management of Commonwealth fisheries.
Most importantly, the bill includes measures to help deter illegal, unregulated and unreported, or IUU, fishing—underscoring the seriousness with which the Government views this problem. In addressing illegal fishing, it emphasises Australia’s commitment to, and leadership in, international efforts to deal with this problem.

IUU fishing is a significant problem for the Australian community and is likely to continue to grow due to declining fish stocks in the northern hemisphere, excess global fishing capacity and increasing fish prices. It threatens Australia’s sovereign interests in our southern and northern waters, particularly the sustainability of fish stocks and the unique sub-Antarctic environment in the waters surrounding Heard Island and McDonald Islands. Unless we can adequately protect Australia’s waters from illegal fishers, future generations will not benefit from these valuable resources.

Strengthening the Commonwealth’s fisheries legislation is a key means of further protecting Australian waters from illegal fishing. This bill contains two important measures that will help deter foreign operators from illegally fishing in Australia’s waters. These are an increase in penalties for foreign fishing offences and strengthening the bond arrangements for foreign fishing vessels that have been seized.

The bill increases the maximum penalty available under the Act for foreign fishing offences committed in the Australian Fishing Zone. This measure is particularly important because custodial penalties are not available for fishing offences due to international law. Currently, the maximum penalty in the Act is 5,000 penalty units, which equates to $550,000. This bill increases the penalty to 7,500 units or $825,000—sending a clear message to offenders, the courts and the international community that the Australian Government views illegal fishing as a very serious crime.

The Government recognises the inherent difference between the scale of illegal fishing carried out by organised industrial operators and small artisanal fishers. Consequently, the penalty increase will only apply to foreign boats that are 24 metres or above in length. This ensures that the higher penalties will apply to any illegal operators in the Southern Ocean and also captures the larger pair trawlers that occasionally fish illegally in our northern waters.

Another sign of Australia’s determination to ensure illegal fishers are brought to justice are the amendments enabling the Government to include the costs it has incurred in pursuing and apprehending a foreign boat in any security, or ‘bond’ placed on an apprehended boat. Under the United Nations Convention on the Law of the Sea, the Australian Government is obliged to promptly release boats seized for suspected fishing offences. The aim of the bond is to allow expensive vessels to return to fishing while a prosecution is underway; the bond provides the Government with security in case the boat absconds before legal proceedings are complete. The amendments will give the Government the capacity to include all reasonable costs that the Government has incurred in the pursuit and apprehension of the vessel. This includes costs to return the boat to Australia for processing and those incurred by foreign governments that have assisted Australia.

The bill also allows the Government to choose to recover the costs of pursuit and apprehension from the owner of the foreign illegal fishing boat. The costs of pursuit and apprehension will be incurred in the form of a debt to the Government that is recoverable, provided the boat is deemed forfeited and the boat owner does not successfully contest the debt in the Federal Court.

The new provisions relating to the recovery of pursuit costs and bonds will apply only where a foreign boat is suspected of fishing illegally and pursued and apprehended after the master of the boat fails to obey certain commands of a fisheries officer. The debt to the Commonwealth will start accruing when the master fails to comply with a command from a fisheries officer to stop the boat to allow an officer to board it or to bring the boat to a specified place. The debt will stop accruing when the boat arrives at a port for processing. The bill provides a general outline of costs that may be included in the debt and that regulations may set out principles for calculating the Commonwealth’s pursuit costs.

The bill allows the boat owner to challenge the debt in the Federal Court on the grounds that the debt is not payable because the master of the boat obeyed all commands of the fisheries officer or
because the amount is not reasonable and/or was not correctly calculated. The costs will be payable as an administrative penalty by the boat owner. This measure provides the Government with a mechanism to pursue, in a foreign jurisdiction, the owners of the seized boat for payment of the debt.

The other amendments in this bill are a result of ongoing refinements in fisheries management practices and changing circumstances in Commonwealth-managed fisheries. They will improve the operating efficiency and effectiveness of the AFMA in its management of Commonwealth fisheries resources. These amendments have been prepared in full consultation with industry through AFMA’s well-established management advisory committee process, and have been considered and approved by the AFMA Board.

Currently under the Act, fisheries officers have certain powers to stop and detain vehicles and aircraft, examine equipment, enter premises and make other requirements. In exercising these powers, the officers must produce written evidence of their identity, such as an identity card. An exception arises when an officer requires the master of a boat to stop and allow the officer to board.

This bill allows for a fisheries officer not to have to immediately produce an identity card where it is impossible to do so—for example, when an officer on a patrol vessel directs the master of a fishing boat over the radio. Nonetheless, it requires that officers make all reasonable efforts to identify themselves and present their ID card at the first available opportunity after exercising their powers. There are no exceptions to this requirement—it will apply in all circumstances.

The bill also enables AFMA to give, by notice published in the Commonwealth Gazette, directions regarding the closure or partial closure of a fishery. This provision will only be applicable in circumstances where:

- AFMA is satisfied that such action is necessary and is consistent with the pursuit of its objectives;
- there is no plan of management for the fishery; and
- AFMA has consulted with the relevant management advisory committee and all fishing permits holders.

Currently under the Act, where there is no plan of management for a fishery, closures are effected mainly through varying permit or licence conditions. While this is generally effective in circumstances where there are multiple activities permitted by permit or licence, it is not satisfactory where the variation of the condition has the effect of negating any use at all of the permit or licence. Such use of permit and licence conditions may be ultra vires. This bill will ensure that the permit system is as effective as possible and that AFMA has the authority to ensure the Commonwealth fisheries are managed in a sustainable manner.

The bill provides a measure to reduce the latent effort in fisheries by giving AFMA the authority to waive the levy payment, and any penalty for non-payment of the levy, if a fishing permit is surrendered. This will only apply in circumstances where the permit holder has not fished at all during the period to which the permit applies, despite holding a permit. It will not apply if any fishing activities have been undertaken under the permit.

In addition, the bill contains provisions requiring the holder of any fishing right, permit or licence to return the original document to AFMA as soon as practicable after giving AFMA written notice that it has been surrendered.

Under Part 4 of the Act, AFMA must keep a Register of statutory fishing rights issued under plans of management. The Register facilitates the trading of fishing rights and the efficient management of fisheries. However, as many fisheries are managed via short-term permits, the bill requires AFMA to establish and maintain a Fishing Permits Register. The Register will contain information relating to each fishing permit and will be available for inspection in accordance with regulations and on payment of a small administrative fee. Appropriate penalties will apply to parties found falsifying information provided to the Register or purported to have been generated from the Register.
Finally, consistent with existing provisions for the Chairperson of a management advisory committee (MACs), the bill contains amendments to the Fisheries Administration Act 1991 to allow the Remuneration Tribunal to set remuneration and allowances for other members of Management Advisory Committees. This is consistent with the findings of an independent report into the performance of MACs, which recommended that MAC members be remunerated for their duties.

In summary, I consider that the initiatives contained in this bill should support Australia’s efforts to combat IUU fishing, strengthen our domestic fisheries management arrangements and help to protect valuable Commonwealth fisheries resources.

NORFOLK ISLAND AMENDMENT BILL 2003

The purpose of the Norfolk Island Amendment Bill 2003 is to amend the Norfolk Island Act 1979 to align Norfolk Island’s electoral provisions more closely with those of the Federal Parliament, the Parliaments of the States and the legislatures of the other self-governing Territories.

The bill has three important elements. It extends the right to vote in Legislative Assembly elections to all Australian citizens ‘ordinarily resident’ on Norfolk Island for more than six months. It establishes Australian citizenship as a qualification for enrolment and for election to the Legislative Assembly. At the same time, the bill preserves the existing enrolment rights of those who would not otherwise be eligible under the new arrangements.

This means that the proposed changes will not affect the right to vote of any person currently on the electoral roll, regardless of citizenship. However, in the future any person seeking enrolment, and any candidate for election to the Legislative Assembly, would have to be an Australian citizen.

The technical details are set out in the bill’s explanatory memorandum, as is an explanation of the current split of electoral provisions between the Norfolk Island Act 1979 and the Legislative Assembly Act 1979 (Norfolk Island). By way of a general observation, the bill’s inclusion of the electoral provisions applying to the Norfolk Island Legislative Assembly in the Territory’s self-government Act is consistent with such provisions being in the self-government acts for both the Australian Capital Territory and the Northern Territory.

In March 2000 a bill containing almost identical measures was defeated in the Senate. During the debate, there was a suggestion that there had been insufficient consultation with the Norfolk Island community. While not accepting the merits of that claim, the Government referred the electoral proposals to the Joint Standing Committee on the National Capital and External Territories for inquiry.

After extensive consultation, including public hearings both on Norfolk Island and in Canberra, the Joint Standing Committee unanimously recommended the implementation of the very same measures as those included in the original amendment bill.

As with the previous bill, this bill aims to protect the democratic rights of Australians living in a remote part of Australia and ensure that, if they are ordinarily resident there, they will be able to participate in the decision-making processes affecting their day to day lives. The bill is about democracy, justice and a “fair go” for all. What the bill is trying to achieve, democracy at its most basic level, is therefore something every Parliamentarian should be passionate about.

The local laws force people to wait for two and a half years before being able to participate in Norfolk Island elections. The Government does not believe that this is acceptable in any Australian jurisdiction. The standard qualifying period on the mainland is 1 month, while in Tasmania it is six months.

The six month qualifying period proposed for Norfolk Island represents a fair and reasonable compromise. It is meant to address the concerns of those Island residents who have argued that many who come to live on the Island are effectively there for a working holiday and may not have an understanding of local culture, and this in turn could distort the outcome of elections. The qualifying period also takes into account the Island’s historical background. The 6 month residency period is not a new qualification for Norfolk Island. From the Declaration of Laws and Regulations in 1857 until the amendment of the
electoral laws by the Norfolk Island Council Ordinance 1968, enrolment on the electoral roll was based upon a residency requirement of six months.

The bill also removes the right for non-Australian citizens to enrol and stand for election to an Australian legislature. There can be no justification for the continuation of such an anomaly. The Government does not believe that non-Australian citizens should be able to decide what laws will apply to Australian citizens in an Australian community. The Government does not believe that Norfolk Island should, in this respect, be different from all other Australian legislatures. It is a most fundamental aspect of representational government.

High Court decisions and successive Federal Governments have confirmed that Australian citizenship is the fundamental prerequisite for membership of an Australian legislature. This does not devalue differences in cultural background or country of birth. It simply means that all persons aspiring to Federal, State or Territory Parliaments must demonstrate their commitment to Australia by taking out Australian citizenship before they stand for election.

Successive Australian Governments have acknowledged the importance of Norfolk Island to Australia’s national heritage and the value of the traditions and culture of the Pitcairn descendants as part of multicultural Australia. However, while the Norfolk Island community is unique in many ways, so too are other communities throughout Australia—other communities with a distinct cultural heritage and history. Despite such differences, Australian citizenship, with residency of either 1 month or 6 months, remains the electoral norm. There is no evidence that such an approach has resulted in damage to local culture and traditions elsewhere in Australia.

In considering the need for electoral reform, it is important to bear in mind that the Australian Parliament has an overarching responsibility to protect the rights of its citizens, wherever they might live in the Federation. The Parliament also has an obligation to ensure that the laws in all Australian jurisdictions are consistent with national obligations under international law. On this point, the previous Attorney-General confirmed that Norfolk Island’s electoral arrangements are not consistent with Australia’s international obligations under the International Covenant on Civil and Political Rights.

In summary, the arguments in favour of electoral reform are compelling. Norfolk Island is part of Australia. Nothing is more fundamental than the right to participate in the democratic process at the local level, whether that is a local council or a Legislative Assembly. Being forced to wait for 900 days, almost 2 and a half years, to exercise such a right is neither fair nor reasonable. It is also a fundamental and reasonable requirement that members of Australian Parliaments be Australian citizens.

This bill will remove an undesirable and undemocratic anomaly.

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

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

BUSINESS

Consideration of Legislation

Senator HILL (South Australia—Minister for Defence) (9.40 a.m.)—At the request of Senator Ian Campbell, I move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Designs (Consequential Amendments) Bill 2003, allowing it to be considered during this period of sittings.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade Legislation Committee

Reference

Senator HILL (South Australia—Minister for Defence) (9.40 a.m.)—by leave—At the request of Senator Ian Campbell, I move the motion as amended:
That, upon their introduction in the House of Representatives, the provisions of the following bills be referred to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report on 19 March 2004:

Military Rehabilitation and Compensation Bill 2003; and


Question agreed to.

NOTICES
Withdrawal

Senator GREIG (Western Australia) (9.41 a.m.)—Mr President, I withdraw business of the Senate notice of motion No. 2 standing in my name for today proposing a reference to the Senate Legal and Constitutional References Committee.

HUMAN RIGHTS: VIETNAM

Senator HUMPHRIES (Australian Capital Territory) (9.41 a.m.)—I, and also on behalf of Senator Stott Despoja, move:

That the Senate—

(a) expresses concerns over reports of the continued imprisonment of people including religious leaders, on matters of conscience in the Socialist Republic of Vietnam;

(b) notes that:

(i) the International Covenant on Civil and Political Rights applies to the treatment of Buddhist practitioners worldwide, and

(ii) the Republic of Vietnam still requires religious organisations to be affiliated with state-sponsored umbrella organisations;

(c) expresses its support for a formal, open and effective dialogue between Australia and Vietnam on human rights issues; and

(d) calls on the Government of Vietnam to:

(i) unconditionally release Patriarch Thich Huyen Quang, Most Venerable Thich Quang Do, Venerables Thich Tue Sy, Thich Vien Dinh, Thich Nguyen Ly and other religious leaders in Vietnam from house custody and administrative detention,

(ii) recognise that the practice of religion should not form the basis of the incarceration of any individual, and

(iii) remove restrictions placed on officially sanctioned religions, and the prohibition on church-led private education and charitable work.

Question agreed to.

INDIGENOUS AUSTRALIANS: JIMMY LITTLE

Senator RIDGEWAY (New South Wales) (9.42 a.m.)—I move:

That the Senate—

(a) congratulates musician and entertainer, Mr Jimmy Little, on receiving the prestigious Red Ochre Award (2003) from the Australia Council for his outstanding contribution to the national and international recognition of Aboriginal and Torres Strait Islander arts;

(b) notes that some of Jimmy Little’s contributions include:

(i) a musical career that spans more than 50 years,

(ii) being Australia’s first Aboriginal pop star, recording his first popular release record in 1956, which reached the ‘top ten’ in the popular music chart,

(iii) achieving a number one hit in 1963 with the song ‘Royal Telephone’, which sold more than 75 000 copies and achieved ‘gold’ status twice,

(iv) many years as a mentor/teacher for Indigenous adult students at Eora College in Redfern,

(v) being named Aboriginal of the Year at the 1989 National Aboriginal and Islander Day Observance Committee awards; elevated to the Australian Country Music Role of Renown in Tamworth in 1994; and inducted into
the Australian Record Industry Association Australian Music Hall of Fame in 1999, and
(vi) continuing his role as an ambassador for the National Literacy and Numeracy Strategy in Indigenous education; and
(c) recognises that Jimmy Little is as much a statesman as a musician, who has been an outstanding advocate for his people and a true gentleman and family man.

Question agreed to.

GENETICALLY MODIFIED CROPS
Senator CHERRY (Queensland) (9.42 a.m.)—by leave—I move the motion as amended:

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) and the Minister for Health and Ageing (Mr Abbott) to ensure that these resolutions are debated at the next relevant ministerial councils, in recognition of the widespread concern in the grains industry about the introduction of genetically-modified crops and the cost implications for farmers.

Question agreed to.

FUEL: ETHANOL
Senator ALLISON (Victoria) (9.43 a.m.)—I move:

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.

Question negatived.

FORESTRY: LOGGING
Senator BROWN (Tasmania) (9.43 a.m.)—I ask that general business notice of motion No. 748, which calls for an end to
logging in old-growth forest in the north-east highlands of Tasmania, including the Blue Tier, be taken as a formal motion.

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

Honourable senators—Yes.

The PRESIDENT—There is an objection.

Suspension of Standing Orders

Senator BROWN (Tasmania) (9.44 a.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 this Senate, namely a motion to give precedence to general business notice of motion no. 748.

Mr President, the matter is urgent.

Senator Watson interjecting—

Senator BROWN—Senator Watson has noted that we are talking about a different area from the Tarkine, which we dealt with yesterday. But it is true I am flagging with this motion the urgent need for intervention by the government, and I would expect the Latham opposition to protect the Blue Tier as the centrepiece of a national park for the north-east highlands in Tasmania. This is the area to the east of Scottsdale and to the west of St Helens with magnificent vistas going to the oceans from the Blue Tier. It includes Mount Victoria and absolutely stunning rainforest as well as tall eucalypt forest.

These are state forests which deserve to be reserved. They have an enormous attractiveness for the job rich tourism industry in the north-east, and protection is supported by a very vigorous group of local people including tourist entrepreneurs. Unfortunately, some of the prime components of the area are being rapidly eroded by clear-fell logging for the woodchip industry, and in particular for Gunns Pty Ltd, which, as we all know, has been making more than $70 million in the last year out of this calamity in Tasmania’s forests. Gunns is a company which has no hesitation in shedding jobs in Tasmania if it is going to enhance the bottom line.

I would expect that we will hear from Senator O’Brien again on this in a way which is to vilify those people who are advocating the protection of the north-east highlands and Blue Tier and the information they use. We have seen it in the last two days. The information comes from the Wise Use Movement in the United States. It is aimed at vilifying the people and their campaign for their local area rather than relating to the issue of the beauty, the natural amenity and the people in the locality having the right to have a say in the events overtaking their forests.

I have been to the Blue Tier many times since the 1970s. It was formerly a centre of mining way back at the start of the last century. This region was visited and lived in by the Chinese mining prospectors as well as the Caucasian miners. Tin mining has largely been swept from the area. In environmental terms it caused quite an impact on the area. Now, however, it is truly an amazing piece of forest heritage, a living forest full of wildlife, much loved by the locals. Forestry Tasmania and Gunns’s approach, however, is clear-fell logging. This has included some of the very biggest trees. You get pictures of a dozen or more people backing onto trees touching fingertip to fingertip around these giant eucalypts which have been there for 300, 400, 500 years—they were living there with the Aboriginal people over the centuries and long before that. And these living ecosystems are being dynamited by Forestry Tasmania—dynamited, if you don’t mind—in this region because that saves jobs for Gunns and that saves jobs from the point of view of Forestry Tasmania. It is ruthless. As Peter Cundall said at the Press Club yesterday, it is driven
by greed. It is inappropriate. It is short-sighted. It does not foster the best jobs interest, the economic interest, or the environmental interest of Tasmania—the poorest state in the Commonwealth. It is incumbent upon the government and, indeed, the alternative government, the opposition, to move to use Commonwealth powers to protect this wonderful area for the north-east of Tasmania and its long-term future.

Senator O’BRIEN (Tasmania) (9.49 a.m.)—I will be brief because I know we are under time pressure today. As with yesterday’s motion by Senator Brown and the one the day before, this is just another attempt to destroy the forest industry in Tasmania and the jobs of 10,000 Tasmanians with what can only be charitably referred to as ‘half-truths’.

I note again that Senator Brown drafted his motion in the chamber, and I commend his drafting.

Senator Brown—I write my own.

Senator O’BRIEN—I commended your drafting, Senator Brown, and I am very pleased to hear that. Someone suggested that it was a prescriptionist handwriting—I think that is very unfair; it is very well-written! But the fact remains that it does highlight some matters, as Senator Brown said earlier, that I think need to be addressed today.

The Blue Tier is the highland area in the north-east of Tasmania, north-west of St Helens and north of Pyengana. The tier is dominated by two large forest reserves proclaimed under the regional forest agreement, the Blue Tier Forest Reserve and the Frome Forest Reserve. The existing Blue Tier Forest Reserve includes glacial refugia, that is rainforest that is resilient to climate change. Under the regional forest agreement, rainforest in the glacial refugia is protected. There is very little rainforest in the area not protected—that is, the coupes in the Blue Tier area—and I understand that harvesting operations in that area will not include rainforest as defined in the regional forest agreement. I also understand that a management plan is in place to protect the rare Simpson’s stag beetle, which is found in area.

The Break of Day Council has nominated an area for a moratorium on logging. I am assuming that that is the area Senator Brown is referring to, and I think his contribution today confirms that. The forests in the nominated area, that is the coupes, are not pristine wilderness. The coupes in question have been logged in the past, and I wonder why that has not been drawn to the attention of the Senate by Senator Brown. There has also been mining in the area—Senator Brown did refer to that today. The area that the Break of Day Council has nominated covers about 4½ thousand hectares of forest, and it should be understood that 26 per cent of that municipality is already reserved.

The effect of Senator Brown’s motion would be to effectively lock up a resource which would see the Tasmanian economy miss out on approximately $134 million. This includes $105 million in high-value sawlogs used for furniture making, floorboards and specialist timbers. I understand that forestry in this area currently directly employs 115 people—not well-paid people, not general practitioners, not senators, but Tasmanian workers who have a desire and a right to earn a living.

It is significant that the Tasmanian government has announced that it will review the possibility of phasing out clear-felling in old growth forests. That has some significant impacts. One matter that should be drawn to the Senate’s attention is that, as I understand it, the actual timber fellers in the forest run great risks in a non clear-fell operation. In fact, those sorts of operations have led to the
deaths of two or three timber workers in the last 12 months. There will be significant health and safety risks for workers through not pursuing a clear-fell regime, but the Tasmanian government will pursue investigations as to the viability of that as an option. That is an appropriate course of action which renders this motion quite irrelevant at this time.

Senator HARRADINE (Tasmania) (9.54 a.m.)—I hesitate, on the last day, to rise to talk about this matter. I did not talk about the Styx matter in the debate the day before yesterday; I was otherwise engaged. I know the Styx area well. As a matter of fact I was at the Styx, I climbed up Mount Mueller, when I heard that there were others down the way doing other things. You have to get a broad view of all these things. We used to go up to the Blue Tier in the north-east, for example, every year and pitch a tent by a stream and it was idyllic. There are too many gawkers around the place at the moment for us to get out there. That is good for the industry but it is not too good for a quiet camp. I was very pleased to hear Senator O’Brien say that the government is reviewing this with a view to phasing out certain of the activities taking place. I do not know whether the growing of nitans, for example, is going to do much good for the ecosystem—in fact, I do not think it will do it much good at all. It is a marvellous area. The guts were ripped out of it by the tin miners. If you go for walks there you can see whole areas of regeneration—huge man ferns and so on. Nature is reclaiming that particular area marvellously. I think it is important to have a sensible discussion about it. I know Senator Brown will not mind me saying this: slow down on the hyperbole. I do not know whether they are blasting 500-year-old trees and so forth. Anyhow, I look forward to continuing a reasoned debate on this matter.

The PRESIDENT—The question is that the motion to suspend standing orders be agreed to.

A division having been called and the bells being rung—

The PRESIDENT—Senator Brown, I understand that, prior to the sitting of the Senate this morning, you distributed some material in the chamber. I remind you that it has been the rulings of previous presidents and this President that unauthorised material distributed in the chamber must be removed. Therefore, later in the morning, so that there will be no disruption to the chamber, I will ask the attendants to remove that material. In future, please remember that any senators who wish to distribute material in the chamber have to get the authorisation of the President first.

Senator Brown—I distributed this morning a beautiful colour brochure on the Tarkine wilderness in the spirit of a Christmas gift at the end of the year. I think it will elevate everybody’s spirits as we face a long night ahead. The response I have had so far has been very positive. I hope people enjoy it, Mr President.

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

The Senate divided. [10.01 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes---------- 9
Nees---------- 38
Majority------ 29

AYES
Bartlett, A.J.J. Brown, B.J.
Cherry, J.C. Greig, B.
Harradine, B. Murray, A.J.M.
Nettle, K. Ridgeway, A.D.
Stott Despoja, N.
Senator STEPHENS (New South Wales) (10.03 a.m.)—I move:

That the time for the presentation of the report of the Economics References Committee on whether the Trade Practices Act 1974 adequately protects small business be extended to 11 February 2004.

Question agreed to.

Senator HARRIS (Queensland) (10.04 a.m.)—I seek leave to make a short statement relating to notice of motion No. 721.

Leave granted.

Senator HARRIS—Thank you, Mr President, and I thank the Senate. Notice of motion No. 721 is a motion on substantive issues. It relates to a matter that has been unresolved for 14 years. It concerns me to have to indicate to the Senate that at the end of my brief comments I am going to seek leave to have the notice of motion remain on the Notice Paper until the next period of sitting. The issue is substantive. The Senate may have been misled—by the altering of documents that were provided to it and also by the wilful withholding of documents that should have been provided to it. The matter relates to child abuse and the impacts on the life of the person who raised this issue, Mr Kevin Lindeberg. He has been raising it for

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.

Question agreed to.

NOTICES

Postponement

Senator HARRIS (Queensland) (10.04 a.m.)—I seek leave to make a short statement relating to notice of motion No. 721.

Leave granted.

Senator HARRIS—Thank you, Mr President, and I thank the Senate. Notice of motion No. 721 is a motion on substantive issues. It relates to a matter that has been unresolved for 14 years. It concerns me to have to indicate to the Senate that at the end of my brief comments I am going to seek leave to have the notice of motion remain on the Notice Paper until the next period of sitting. The issue is substantive. The Senate may have been misled—by the altering of documents that were provided to it and also by the wilful withholding of documents that should have been provided to it. The matter relates to child abuse and the impacts on the life of the person who raised this issue, Mr Kevin Lindeberg. He has been raising it for

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(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.

Question agreed to.
14 years. It is a matter of importance that the Senate should address. I seek leave to have notice of motion No. 721 postponed until the next period of sitting.

Leave granted.

Question agreed to.

Senator HILL (South Australia—Minister for Defence) (10.06 a.m.)—I seek leave to make a brief comment on the same matter.

Leave granted.

Senator HILL—I am speaking because the government was approached by Senator Harris on this matter seeking support. I received certain documents yesterday which, according to the argument, should have been put before the Senate committee some years ago and were not put and, as a result of that failure, the committee reached certain conclusions which it may not otherwise have reached. I have also been presented with a document that was put before the Senate committee but, it is alleged, was cropped so that matters relevant to the Senate committee were removed and not brought to the attention of the committee.

Allegations of misleading a Senate committee are obviously very serious. I have undertaken to Senator Harris that the government will carefully consider the detail of the matter during the break and, on the basis of careful consideration, will decide whether we are able to support Senator Harris’s motion. If the government and the opposition are going to consider Senator Harris’s motion over the break, I would ask that they refer to that amendment in their considerations as well.

The PRESIDENT—Senator Harris has moved to postpone the matter, but you are asking that other senators look at your amendment during the break before the matter comes back on the notice paper. Is that correct?

Senator MURRAY—Yes.

COMMITTEES

Employment, Workplace Relations and Education References Committee

Extension of Time

Senator GEORGE CAMPBELL (New South Wales) (10.09 a.m.)—I move:

That the time for the presentation of the report of the Employment, Workplace Relations and Education References Committee on the exposure draft of the Building and Construction Industry Improvement Bill 2003 be extended to 13 May 2004.

Question agreed to.

COMMUNICATIONS: PROGRAM CLASSIFICATION

Senator RIDGEWAY (New South Wales) (10.09 a.m.)—I move:

That the Senate—

(a) notes that:

(i) currently, only G-rated material can be broadcast between 4.30 pm and 7.30 pm on weekdays and from 6 am to 7.30 pm on weekends,

(ii) the draft for the revision of the commercial television industry’s code of practice proposes a drastic reduction in G-rated television programming, from 57 hours weekly to 22 hours,

(iii) if the draft proposals are adopted, the afternoon G-rated period would be cut to one hour, from 4 pm to 5 pm, and on
(iv) the Australian Parents Council, which represents hundreds of thousands of parents, has written to the Office of Film and Literature Classification, the Australian Broadcasting Authority and the Federal Attorney-General, denouncing these proposals; and

(b) calls on the Government to ensure that the G-rated viewing times remain at current levels.

Question agreed to.

COMMITTEES

Procedure Committee

Report

Senator HOGG (Queensland) (10.10 a.m.)—I present the third report of 2003 of the Procedure Committee entitled Joint meetings to receive addresses by foreign heads of state and reference of tax expenditure statements to estimates hearings.

Ordered that the report be printed.

Senator HOGG (Queensland) (10.10 a.m.)—I seek leave to move a motion in relation to the consideration of the report.

Leave granted.

Senator HOGG—I move:

That consideration of the report be made a business of the Senate order of the day for 11 May 2004.

Question agreed to.

Finance and Public Administration References Committee

Report

Senator FORSHAW (New South Wales) (10.10 a.m.)—I present the report of the Finance and Public Administration References Committee on the administrative review of veteran and military compensation and income support, together with the Hansard record of the committee’s proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator FORSHAW—I seek leave to move a motion in relation to the report and to incorporate my tabling statement in Hansard. In doing so I would just like to read the final paragraph:

In closing, I would like to thank my colleagues on the Committee for their efforts and their cooperation in producing a unanimous report. I would also like to thank all those who assisted the Committee with its deliberations, including the Committee secretariat—namely, Alistair Sands, Di Warhurst and particularly David Sullivan whose expertise in this complex area was of great assistance during the inquiry and the writing of the report.

I commend this unanimous and informative report to the Senate.

Leave granted.

Senator FORSHAW—I move:

That the Senate take note of the report.

The statement read as follows—

The purpose of this report is to assess the current review structure and process for veteran and military compensation cases and analyse a range of options for streamlining the review hierarchy and improving the review system’s administration.

The impetus for this inquiry was the release of the draft Military Rehabilitation and Compensation Bill 2003 by the Minister for Veterans’ Affairs on 27 June 2003. Chapter 8 of the bill deals specifically with the review process in the area of veteran and military compensation. Significantly, the core structures and procedures of appeal which currently operate under the Veterans’ Entitlement Act 1986 (VEA) and the Military Compensation and Rehabilitation Scheme (MCRS) will remain the same under the proposed new scheme.

The Committee is concerned that in the future, with one common Act applying to all types of service, the institutional framework for external review will remain tied to the previous dual eli-
bility model based on two very different Acts. This will effectively mean vastly different processes for ADF personnel, dependent only on their type of service—including consideration of appeals in two separate Divisions of the Administrative Review Tribunal (AAT). The Committee has difficulty accepting the reasons put forward by the Department of Veterans’ Affairs (DVA) for replicating the current system, given its inherent problems.

There is a remarkable consistency in the problems with the veterans’ review process that have been identified by key stakeholders over the past 20 years, yet working through these problems and finding practical solutions has proven difficult.

The Committee identified at least five administrative problems caused by the structure of the veterans’ review process which have not been satisfactorily addressed by government or by key stakeholders. These include:

- The high level of demand for review of primary claims;
- Delays in settling appeals caused by the withholding of important information from decision-makers at the primary and first tier (VRB) stages of the review process;
- A culture of appeal where the VRB is seen as a stepping stone to a higher (and quasi-judicial) level of review where legal aid is available;
- The high overturn rate caused in most cases by new medical evidence being made available at the AAT stage of the review process; and
- The poor knowledge and skills base of ex-service organisations (ESOs), and the risk to the review system associated with a declining pool of ESO advocates.

This report essentially attempts to address these outstanding problems. Reform of the veterans’ review process has become unnecessarily complex—remains unresolved.

The Committee examined the relationship between the review structure and these problems, especially the extent to which the three-tier review hierarchy is a factor contributing to the high level of demand for review of primary decisions. It finds that the current rate of appeals under the VEA and the MCRS does not support a strong connection between the review structure and the willingness of claimants to exercise their right of appeal.

Instead, two factors are contributing to the high number of appeals of primary decisions and the high overturn rate at the VRB and AAT—the ability of claimants to introduce new evidence at any stage of the review process and to withhold important information until their case is reviewed by the AAT.

The most telling criticisms of the review process are reserved for the Military Compensation and Rehabilitation Scheme. The Committee received evidence from ex-service organisations (ESOs) and legal representatives about a reported practice of delegates of DVA using external legal advice for the purpose of the entire reconsideration of the original decision. While the Committee is unable to determine to its satisfaction the extent to which whole reconsiderations are being referred to lawyers for advice, it believes the issue needs to be reviewed by DVA and recommends that remedial measures be implemented should they be required.

Leading stakeholders are also highly critical of the different avenues of appeal under the current review system. ESOs in particular expressed their support for a streamlined and single review process for all ADF and ex-ADF personnel regardless of whether their service is warlike, non-warlike and peacetime only. Based on the strength of this concern, the Committee recommends that the review process under the new military compensation scheme should be the same for all ADF and ex-ADF personnel and that one Division of the AAT should hear all appeals.

An issue at the heart of this inquiry is identifying what combination of structural and administrative reforms is needed to help reduce the demand for review of primary decisions and facilitate the
early settlement of appeals. The Committee made a number of findings after considering a range of reform options:

- Abolishing the VRB or collapsing the VRB and AAT review tiers into one streamlined process would be premature at this point in time because these options do not have the political support of ESOs. The VRB should be retained as the first tier of external review, with the AAT continuing as the final body of merits review available to veterans or widows;

- The Committee supports a cautious and incremental approach to reform if this avoids the need to pursue more difficult systemic reform. It believes that every opportunity should be provided to test the effectiveness of administrative reform before heading down the path of far-reaching structural reform;

- The Committee would like to see the issue of legal aid in the veterans’ jurisdiction kept under review. It believes that non adversarial models of legal representation in the VRB may be worth considering in the future;

- The Committee finds that disbursements for medical evidence at the VRB stage are inadequate. Reimbursements earlier in the review process should encourage provision of better evidence;

- The Committee believes conciliation and mediation processes similar to those used at the AAT should be introduced into the VRB in an attempt to settle cases earlier in the review process; and

- Ex-service organisations play a crucial role in the veterans’ review process. However, the Committee believes that funding for two key programs that assist ESOs in providing services to the veterans’ community—the Training and Information Program (TIP) and Building Excellence in Support and Training (BEST) program—should be on at least a biannual basis.

The main conclusion that the Committee draws from its assessment of reform options is that radical proposals to restructure the veterans’ review process do not have the support of the veterans’ community and, for this reason, should not be pursued in the short to medium term. A number of options canvassed during the inquiry were strongly criticised by the main ESOs. The Committee believes that there are worthy reforms which could be initiated to give effect to the strong criticisms of the review process that have been raised within the veteran’s jurisdiction over many years. Moreover, the Committee would like to see priority given to incentives to assist with the early provision of information and hence the earliest possible settlement of appeal cases. The Committee would also like to see an increased use of VRB Registrars to ensure that applications are not deficient with regard to all necessary supporting material, including medical evidence.

For all of the reasons considered in this report, the Committee finds that the best way to approach reform of the veterans’ review system is to support incremental reforms rather than impose a major reform agenda onto a system that, in the Committee’s view, performs effectively. Specifically, the Committee recommends that a modified review process be trialled in one State over a two year period to test the effectiveness of a number of modest changes to the VRB stage of the review process.

In closing, I would like to thank my colleagues on the Committee for their efforts and their cooperation in producing a unanimous report. I would also like to thank all those who assisted the Committee with its deliberations, including the Committee secretariat—namely, Alistair Sands, Di Warhurst and particularly David Sullivan whose expertise in this complex area was of great assistance during the inquiry and the writing of the report.

I commend this unanimous and informative report to the Senate.

Senator MACKAY (Tasmania) (10.12 a.m.)—On behalf of Senator Bishop, I seek leave to incorporate Senator Bishop’s speech with respect to this report and on behalf of
Senator Bishop seek leave to continue his remarks.

Leave granted.

Senator Bishop’s incorporated speech read as follows—

The matter of administrative review within the veteran and military compensation system is extraordinarily complex and about which many people are concerned.

This report is an excellent report and I do not say that lightly.

In fact I would venture to say that due to the thoroughness of the research and analysis undertaken by the secretariat, I believe the report can be said to be a reference point from which all future consideration can be sourced.

For that I am sure the Committee is most grateful and while I am reluctant to distinguish individuals in any team, I congratulate Mr David Sullivan for his fine effort.

Mr Acting Deputy President, this inquiry had two key stimuli which were linked, but which nevertheless are subject to separate Government consideration.

The first was that the Government has proposed a new, single military compensation scheme

- to take the place in the future of the dual schemes currently operating together
- as they have done for years with many highly unsatisfactory outcomes.
- Yet, despite the proposal for a single scheme, the draft Bill circulated for comment proposes that the current administrative review regime applying to the dual system, should continue to apply to the new scheme.
- Second, the current schemes of administrative review under both the Veterans’ Entitlement Act and the Military Compensation Scheme have a large number of problems which are the subject of constant complaint and on which there has already been a number of influential reviews, but with only piecemeal, incremental change.
- On the first stimulus, the draft Bill proposes that despite there being one single compensation scheme for all ADF and ex ADF personnel in the future, there should be two avenues of appeal
  - one to the VRB and the current Veterans’ Division of the AAT for those with warlike service
  - and another for those with peacetime service only, to the general Compensation Division of the AAT.

As I understand it, this has been a messy compromise whereby the Department of Defence totally rejects the use of the VRB and of course the Department of Veterans’ Affairs, which is more compliant with the veteran viewpoint, which wants the VRB route retained for everyone.

Putting that tension aside however, the Committee has found, the tying of the new single scheme to the system for the current scheme of dual eligibility is too complicated. It simply makes no sense at all.

This is a chance to get it right.

Hence the Committee’s recommendation (2) that the new scheme should have one single process

- after initial internal review for all rejected claims, appeal should be in the first instance to the VRB, as modified perhaps by other recommendations
- and then to a single Division of the AAT which the Committee has titled the ‘Military Division’.

Given the low number of claims appealed for peacetime service, the already declining rate of appeal, and the streamlining of the system, this ought not carry any additional cost.

Further, it should also be less combative, and I must say that one of the issues which has struck me the most during the course of this inquiry is the huge contrast in attitude, culture and process between the administration of the MCRS and claims made under the VEA.

And I must point out, this is not necessarily derived from the law, which in both cases has principles of justice and fair play at their core.

Many complaints are received in my office concerning military compensation, the great bulk concerning the attitude of the MCRS whose cul-
ture seems to be one of finding reasons to reject, rather than reasons to support a claim.
The taxpayers’ interest is of course very important—but at the end of the day the system has to be fair and objective.
Administration must reflect both the substance and the spirit of the law.
The particular complaint here was that MCRS refer 40% of claims to private solicitors’ firms costing over $5 million each year—and that these opinions are in fact signed off by delegates as decisions.
The ex service community of course believe that as they have little access to advice and advocacy support—or legal aid—that they are totally outgunned.
Certainly it is contrary to the spirit of the law, and hence the recommendation (1) for an audit of this procedure by ANAO and the drafting of guidelines.
Feedback to me from veterans has been that the assumption of management by DVA of the MCRS has made a difference, but it needs to be understood that MCRS in fact operates by delegation from COMCARE, and that the harder line of Defence continues to prevail.
Therefore, the streamlining of all claims into one process—VRB and then AAT—will be a welcome move.
With respect to the second main head of the terms of reference, the operation of the current system of administrative review under both the Veterans’ Entitlement Act and the Military Compensation Scheme, the report is very informative and persuasive of the need for further change.
There are a number of issues here, the main one being the perception that the two tiered level of appeal under the VEA to both the Veterans’ Review Board and the AAT is not as effective as it might be in settling claims early, due in large part to the ability to introduce new evidence at any time and the lack of incentive to do so at the primary claim level.
The Committee has found that in light of the high volume nature of the VEA jurisdiction, which considers over 53 000 new claims each year, the time taken in general, and the cost, is not unreasonable.
About one in thirty of these claims end up at the AAT.
This also might also seem reasonable, until it is considered that of those 75% are overturned either by withdrawal, concession or decision—all due to new evidence.
As the Administrative Review Council and ANAO have found before, this is not acceptable.
The Committee has therefore considered a number of options to reduce that tendency.
One which occupied some time in hearings and put by a number of witnesses was that the system should be reduced to one tier, by amalgamating the VRB and the AAT veterans Division—either within the existing VRB with amended processes, or within the AAT.
The veteran community expressed great opposition to this suggestion, but the Committee was more persuaded by the evidence that the two tier structure and the lower cost of the VRB offered an efficient process of eliminating the bulk of appeals.
Hence, while ever the volume remains as it is, internal review continues to work, and the costs are contained, it would be premature to restructure. That though should not rule it out for the future, as numbers reduce.
The key to the problem however, as mentioned, is clearly the ability and the practice within the system to constantly search for new medical evidence, right through the chain.
As noted by the Committee, there is little incentive to get that evidence early.
In fact, it is the reverse due to the availability of disbursements under non means tested legal aid at the AAT up to $2500.
Hence the Committee has recommended that reimbursement for medical opinions prior to the VRB be increased, but that as a disincentive, that sum not be guaranteed prior to the AAT.
This is not to deny the ability of claimants to introduce new evidence, but more to encourage its procurement earlier.
Associated with this is the importance of quality claim preparation, and failing that, quality preparation for appeal.

The high turnover rate at the AAT where legal aid is available, supports the importance of skilled advocacy support in a complex area of law such as this.

It is indeed a pity that it cannot be brought to bear earlier—and that of course is the view of the legal fraternity, not simply for commercial interest, but in the interest of better and earlier outcomes.

An important part of this culture is the largely voluntary advocacy advice provided by ex service organisations and members who, in their retirement dedicate much time to assisting their mates. Likewise too, the fantastic work done by organisations such as Legacy whose commitment is to care for he dependants left behind.

For these people, the VRB by its very nature, is non threatening, informal, non adversarial, and in most cases, non legalistic.

The introduction of lawyers here is therefore not countenanced by them in any way.

 Ultimately however, this may not be sustainable, because while the BEST and TIP programs have been very useful in better skilling voluntary advocates, the indications are that sustaining the effort longer term may be difficult.

It is important however, that the BEST and TIP programs be retained, although as the Committee notes, the distribution of funds should be such to provide longer term certainty, and development of deeper expertise. Hence the supportive thrust of recommendation (3).

Finally Mr Acting Deputy President, I refer to the detail of recommendation (4) which is for change to the processes of the VRB—which I have already mentioned briefly.

It is indeed commonplace these days in many jurisdictions to reduce cost and improve the quality of outcomes through mediation and negotiated settlements.

Again, if new evidence is convincing then it must be brought forward immediately and dealt with quickly.

May I also emphasise the evidence of the Principal Member of the VRB who has been innovative by the registrars reviewing more closely the readiness of appeals submitted - to ensure that as much as can be done in supporting an appeal, has been done.

It is also recommended that, on a trial basis in one state, the processes of the AAT be brought forward. This must include the DVA so that proper settlements can be made.

In closing, may I encourage the Government to look at this report across all portfolios rather than deal only with pieces in stovepipes, as is so often the risk.

I commend the report to the Senate.

Debate (on motion by Senator Forshaw) adjourned.

Publications Committee Report

Senator EGGLESTON (Western Australia) (10.12 a.m.)—On behalf of the Chair of the Senate Publications Committee, I present the 14th report of the committee.

Ordered that the report be adopted.

Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee Report

Senator JOHNSTON (Western Australia) (10.13 a.m.)—I present the report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the effectiveness of the National Native Title Tribunal, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator JOHNSTON—I move:

The Senate take note of the report.

This report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund is the cul-
omination of the committee’s inquiry into the effectiveness of the National Native Title Tribunal and its success in discharging its statutory obligations as set out in the Native Title Act 1993. Given the time constraints presented to the chamber today, I seek leave to incorporate the balance of my speech into the *Hansard*. In so doing, may I congratulate the members of the committee for the way they conducted this inquiry and for reaching a unanimous verdict, and may I thank the secretariat staff, led by Maureen Weeks, for the very fine work that was put into preparing this report.

Leave granted.

*The remainder of the speech read as follows—*

The Committee prepared the report pursuant to subparagraph 206 (d) (i) of the Act. The Committee is required by the Act, to inquire into and, upon the completion of such inquiry, to report to both Houses inter alia upon the effectiveness of the NNTT.

It is now more than ten years since the Tribunal commenced its work, and almost five years since the major amendments to the Act—in part occasioned by the decisions of the High Court of Australia in *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245 and the *Wik Peoples v the State of Queensland and Others* (1996) 187 CLR 1.

Over this period there has been significant change to the functions of the Tribunal. The Committee has maintained scrutiny of the work of the tribunal in its annual examination of the Tribunal’s annual reports.

The Committee’s predecessor issued two interim reports on other aspects of its terms of reference under paragraph 206 (d). As I have indicated this Inquiry has exclusively focussed on the effectiveness of the NNTT.

The inquiry commenced in the previous Parliament and was recommenced with the appointment of the Committee in February 2002. Initially, a mid-October 2002 deadline for submissions was set. However, when a number of organisations, including the Tribunal itself, asked for extensions the Committee agreed to extend the deadline. The Tribunal provided final comments and response to the evidence by the Committee in August this year.

We received views from many people and organisations which have experience of the Tribunal and its work. These included indigenous people, native title representative bodies, state, territory and local governments, lawyers, mining companies, and as mentioned, the Tribunal itself.

The Committee received 39 submissions to this Inquiry. In addition, public hearings were held in Cairns, Brisbane, Byron Bay, Perth, Darwin Broome and Canberra.

I would like to outline briefly, some of the issues which have arisen in the course of the Committee’s Inquiry. The list is not exhaustive and I encourage Senators and others to read the report.

The Fifteenth Report, tabled by the predecessor of this Committee noted the difficulties involved in assessing the NNTT’s effectiveness. Although the Tribunal’s functions and methods of operation are determined by the Act, the Tribunal’s core function is the provision of mediation services to claimants and respondents. It is difficult to assess the effectiveness of mediation in circumstances where the Tribunal does not make determinations.

The Committee adopted the objectives for the Tribunal set out in section 109 of the Act as the criteria of its assessment of effectiveness. Based on its findings, the Committee makes a number of recommendations. The Committee also made a number of suggestions as to how the Tribunal should approach their functions.

One of the flag ships of the NNTT has been the work it does to further the understanding of those involved in the native title process so that both claimants and respondents may make informed choices. Suggestions that the Tribunal operated in a manner that was perceived as biased towards one group over another is indicative to the Committee that these programs still have a considerable distance to travel.

Further, the Committee became concerned about the level of understanding and informed consent
in relation to agreement making. A concern that Indigenous Land Use Agreements and other agreements may establish a pathway of costly litigation prompted the Committee to ask that the NNTT stipulate and make it clear to the parties that any such agreement is enforceable, workable and user friendly.

In relation to the work of the Tribunal there were views offered that the Tribunal represented a duplication of functions that were more efficiently performed by others in the process and that the Tribunal was overfunded. The Committee examined these concerns and concluded that the under spend evident in the Tribunal’s financial statements over the previous years is exactly that. The Tribunal did not deliver the anticipated or expected outcomes.

The Committee’s examination of the evidence indicates that the dichotomy of roles between the Registrar and the Tribunal is not well understood, nor is the decision making processes of the two. Added to this, the development of case law means that the work of the Registrar in particular, is evolving and is again often not understood. The Committee therefore recommended that the Registrar provide a brief plain English explanation as to the decision making process.

The work of the Registrar in relation to notification was considered by the Committee. It considers that a wide reaching notification program is critical to a fair and just outcome as it ensures that all parties who may have an interest have the opportunity to participate in the process and encourages the a range of notification strategies be pursued. Further it recommends that the Registrar considers, in consultation with the native title representative bodies, give consideration to providing parties, formal notification of tribunal decisions.

The Committee also identified the need for a more inclusive approach to priority setting as well as the effective use of resources. Establishing priorities should include consultation with Tribunal stakeholders at all levels and include both claimant and respondent groups. The Committee has recommended that within the next 12 months and on both a national and state/territory basis, the NNTT should develop a broad framework for setting priorities that includes consultation with each of the “stakeholders”.

Two other recommendations concern the Tribunal processes and guidelines. The Tribunal has some flexibility in the way it delivers its services, and these may be developed in line with emerging requirements. For this reason the Committee has recommended that the time taken to register Indigenous Land Use Agreements be reduced, and the guidelines on acceptance of expedited procedure objection applications be reviewed to allow some consultation with the appropriate Tribunal member in relation to compliance issues.

The Committee has also recommended that consideration should be given to increasing the number of appropriately qualified indigenous members on the Tribunal, as this would significantly enhance the work of the Tribunal.

During the inquiry the Committee became aware that the NNTT has been involved to an extent in supporting capacity building within indigenous organisations. It believes that such programs can contribute to the efficiency of the Tribunal through providing education and information to the organisations involved in the native title process. Accordingly, the Committee has recommended that the NNTT continue to explore partnerships to develop capacity building programs.

Finally, one further issue which arose in the course of the inquiry was adequacy or otherwise of the funding for the representative bodies. The Committee makes no comment about this specific issue at this stage, as it is not central to the issue of the effectiveness of the Tribunal. However, there is an opportunity for ATSIS to provide the representative bodies with accountability mechanisms to provide accurate assessment of the funding those bodies receive. With this in mind, the Committee has recommended that ATSIS, develop templates for the performance based assessment scheme to assist Native Title Representative Bodies implement the scheme. Further, it recommends that an inquiry be conducted into the work demands and funding needs of Native Title Representative Bodies.

During the inquiry, the Committee heard evidence that suggests that there continues to be a sense of frustration about the native title process generally. The picture of the National Native Title Tribunal...
that emerged is one which acknowledges that it has some strengths and some areas in which the effectiveness of the Tribunal can be improved.

The Committee’s report is focused on contributing to the work of the Tribunal by making recommendations which will address some of the areas identified by the Committee as requiring improvement.

Senator McLUCAS (Queensland) (10.14 a.m.)—I want to make some very brief comments about this report. I concur with Senator Johnston that it is useful for the whole question of native title that the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund has been able to bring down a unanimous report on the inquiry into the effectiveness of the Native Title Tribunal. This inquiry has taken a long time. It began in August 2001. We subsequently had an election, and the new committee which was established after the election took the same terms of reference after it reconvened. So it is a long-awaited report. I know that the Native Title Tribunal, in particular, has been waiting for this report for quite some time.

The terms of reference were difficult to define. It is hard to establish a measure of effectiveness for something like the Native Title Tribunal. However, I concur with Senator Johnston that the committee have done a very good job in defining effectiveness. You will find in chapter 2 of the report the analysis of how we did that; I think that was quite well done. I want to bring the Senate’s attention to two recommendations of the report. Recommendation 3 is:

The Committee recommends, that at the completion of the terms of the current members of the Tribunal, the Government gives consideration to the appointment of an increased number of indigenous members in accordance with the provisions of the Act.

I commend that recommendation to the government. The tribunal does not have enough Indigenous members at the moment. I think it would be very useful for all of those involved in native title if there were more Indigenous members of the tribunal. Recommendation 6 is:

The Committee recommends that a further inquiry be conducted into the work demands and funding needs of native title representative bodies.

This issue of the underresourcing of the native title representative bodies was brought to the attention of the committee on many occasions during our inquiry into Indigenous land use agreements and then during the inquiry into the effectiveness of the tribunal. The underresourcing of representative bodies causes the bottleneck in dealing with the whole matter of native title in that you have representative bodies who simply do not have the funds to progress matters in a timely way. I commend those two recommendations, out of all of them, to the Senate and particularly to the government.

I also join Senator Johnston in thanking the committee secretariat—particularly Maureen Weeks, Anne O’Connell and Rosalind McMahon—for their work. Our committee does a lot of work that is different from that of regular committees of the Senate. We travel to quite isolated places. We go on small planes from time to time, which some of us like and some of us do not. The secretariat did a great job. I also thank Hansard and Broadcasting, who also do an amazing job in doing their work in sometimes quite remote places. I commend the report to the Senate.

Question agreed to.
DESIGNS BILL 2003
DESIGNS (CONSEQUENTIAL AMENDMENTS) BILL 2003

First Reading

Bills received from the House of Representatives.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.18 a.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.18 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

DESIGNS BILL 2003

This Bill will repeal the Designs Act 1906 and implement a new registration system for industrial designs. It represents a fundamental change to the registration and protection of industrial designs in Australia and is the culmination of many years of review and consultation.

In light of industry concerns with the current designs legislation, the Australian Law Reform Commission undertook an extensive review of the Designs Act. The ALRC found that the current designs system provides ineffective protection because registration is too easy to obtain but the rights lack enforceability because it is difficult to prove that a registration has been infringed.

The ALRC recommended that the Government improve the designs system by providing clearer definitions, stricter eligibility and infringement tests, a more streamlined registration system and better enforcement and dispute resolution procedures. The report included 188 separate recommendations, the vast majority of which were accepted by the Government.

An exposure draft of this Bill was released for public comment in May last year and fourteen submissions from a range of interest groups were received. The Government has given close consideration to all the comments received to ensure that this new legislation achieves its intended purpose and is accessible and relevant to all users of the designs system.

This Bill is intended to provide a simple to use, cost effective designs system that provides designers with more enforceable rights.

The key features of the new system are: a higher threshold test for gaining rights and a broader infringement test, which will make a design registration harder to obtain but easier to enforce; a streamlined registration process allowing for quicker and cost effective registration of designs; and a reduced term of registration from 16 to 10 years.

This Bill will implement a new higher threshold test for designs. Currently, the threshold requirement is that a design must be either new or original. The current test has proved unsatisfactory because the meaning of the originality test is uncertain and the interpretation of the newness test has led to dissatisfaction because even very minor alterations have been held to constitute a new design.

The new threshold test will be a two step test; namely, a design will not be registrable unless it is both new and distinctive. The requirement for a design to be new will be a filter to eliminate identical designs. The term ‘distinctive’ is intended to require a greater differentiation than at present from previously published or used designs. The test of whether a design is distinctive will be one of substantial similarity in overall impression. This test will provide that minor or insignificant changes to a design are irrelevant if the overall impression remains one of substantial or significant similarity.

The infringement test will be consistent with the definition of distinctive—if another design is used that is substantially similar in overall impression to a registered design, that use will be an in-
fringement. This infringement test is clear and simple and will help to ensure that design rights are enforceable.

The threshold for registration will also be raised by expanding the prior art base, which is the body of publicly available information that a design is compared with to determine whether or not it is new and distinctive. Currently, the prior art base consists of information about designs that have been published or used in Australia. Under the new designs system all applications for design registration will be assessed against designs used previously in Australia or published anywhere in the world. Expanding the prior art base means that a design will be compared against more information, thereby increasing the likelihood that the design is both new and distinctive.

This Bill implements a new streamlined system of post-registration examination. Currently, all design applications are substantively examined to ensure they meet the relevant statutory criteria. If accepted, they are then published and registered. However, examination is time consuming and expensive and, as only a small proportion of design registrations become subject to infringement concerns or litigation, it is not always necessary.

Under the new system design applications will only undergo a formalities check prior to being registered and published. This allows design owners to put their claims on the public record without the need to go through the costly substantive examination process. Substantive examination will only be undertaken if requested by the owner, or any other person or if the Registrar decides to examine the design. If a third party requests examination, they may give the Registrar any information that is relevant to the decision of whether the design is new and distinctive.

If the Registrar finds that the design meets all the requirements of the legislation then a certificate of examination will be issued and the design will remain on the register. If not, it will be removed. A design owner may only take action to enforce their rights if a certificate of examination has been issued.

Another important aspect of this Bill is the exclusion of spare parts from protection under the new designs system. The Government recognises that whether or not spare parts should be eligible for design protection is a complex issue, and after careful consideration believes that this exclusion is warranted. In reaching this decision, the Government was concerned to ensure effective competition in the spare parts market leading to lower prices for consumers, for example, motorists in the case of spare parts for motor vehicles. An exclusion should give consumers greater choice and lower prices when they are looking to purchase spare parts to repair or restore complex products to their original appearance.

The Bill implements the spare parts exclusion by a ‘right of repair’ exemption. This will still allow the design registration of component parts of a complex product but use of design registered parts for repair purposes (ie as spare parts) will provide a complete defence against infringement. The use of design registered parts for non-repair purposes will be an infringement of the registered design but the onus will be on the design owner to prove that parts were being used for non-repair purposes. This approach recognises that component parts of a complex product can either be used as original equipment or as spare parts, and seeks to strike a balance between providing an incentive for creative activity in design and enabling competition in the spare parts market. It will provide protection for original equipment use by allowing new and distinctive designs of component parts of complex products to be registrable. However, where design registered component parts are used as spare parts for repair or replacement purposes there would not be an infringement.

Given the complexities of the spare parts issue, the operation of the ‘right of repair’ exemption will be closely monitored with a formal review to take place before the end of 2005.

The Government believes that the new design registration system will provide improved protection for design owners against free-riders. It will encourage innovation by helping designers to capture the benefit of their work and make more innovative products available to consumers.
DESIGNS (CONSEQUENTIAL AMENDMENTS) BILL 2003

This Bill will make the amendments necessary as a consequence of the amendments to be made by the Designs Bill 2002. It includes amendments to the Copyright Act 1968 relating to the overlap between design and copyright protection and minor amendments to a number of other pieces of Commonwealth legislation.

Schedule 1 of the Bill will reform sections 74 to 77 comprising Division 8 of Part III of the Copyright Act. This Division deals with the relationship between copyright protection and designs protection. These provisions limit copyright protection of artistic works that are either registered as designs or industrially applied without registration. Typically these provisions apply to drawings that become the designs for mass-produced industrial products.

The policy underlying this Division of the Copyright Act is that artistic works that have been commercially exploited as three-dimensional designs should generally lose copyright protection when used as a design. However, artistic works used as a two-dimensional pattern or ornamentation should continue to receive copyright protection. Works of artistic craftsmanship and buildings also retain copyright protection even where industrially applied. The Australia Law Reform Commission supported that policy but recommended several amendments to simplify and clarify the operation of the Division. The amendments in Schedule 1 implement the Government Response to the Commission’s report and make changes that are consequential to the enactment of the Designs Act 2002.

The amendments that are to be made in Schedule 2 of this Bill are minor amendments consequential to the introduction of the Designs Bill 2002 and repeal of the Designs Act 1906.

Debate (on motion by Senator Ludwig) adjourned.

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

DEFENCE LEGISLATION AMENDMENT BILL 2003

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Defence Legislation Amendment Bill 2003, acquainting the Senate that the House has disagreed to the amendments made by the Senate, and desiring the reconsideration of the amendment disagreed to by the House.

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

LEGISLATIVE INSTRUMENTS BILL 2003

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Legislative Instruments Bill 2003, acquainting the Senate that the House has agreed to amendments (1) and (2) and (4) to (22) made by the Senate, disagreed to amendment (3) made by the Senate and made further amendments, and requesting the reconsideration of the bill in respect of the amendment disagreed to and the concurrence of the Senate in the further amendments made by the House.

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

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Report

Senator COOK (Western Australia) (10.21 a.m.)—I present the report of the Foreign Affairs, Defence and Trade References Committee entitled The (not quite) white paper: Australia’s foreign affairs and trade policy, Advancing the national interest, to
gether with the  *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

**Senator COOK**—I move:

That the Senate take note of the report.

I would first like to congratulate the secretariat to the Senate Standing Committee on Foreign Affairs, Defence and Trade. They have done a magnificent job in supporting what has been this year a very heavy workload for this committee. I mention for the *Hansard* record that the thanks of the committee go to Mr Brenton Holmes, the committee secretary; Dr Sarah Bachelard; Ms Saxon Patience; Ms Andrea McAuliffe; Ms Pamela Corrigan; and Ms Laurie Cassidy.

The Senate Standing Committee on Foreign Affairs, Defence and Trade, in conducting its inquiry into the Department of Foreign Affairs and Trade white paper entitled *Advancing the national interest*, has been a platform for community views and an opportunity for expert opinion to be solicited on a whole range of foreign and trade interests. This is a key role of the parliament. So too is the obligation to make constructive suggestions about how our national focus on these issues can be facilitated and how public opinion can be more effectively channelled to the advantage of our legislators and policy makers. This report brings parliament into the discussion.

How our nation responds to the complexity of the multi-tiered international challenges and relationships is a subject constantly in our national conversation. That alone is a reason for a government to set out, preferably in a white paper, what its guiding principles are and what its attitude is on some of the key issues. Not only do Australians need to know this, but so do our neighbours, allies and the other nations who from time to time have to take account of Australia’s position, or at least be able to anticipate it.

In a recent book called *Making Australian Foreign Policy*, analysts Allan Gyngell and Michael Wesley assess the influence of parliament on Australia’s foreign policy. The pickings are slim indeed. In Australia the parliament has no formal powers in the way the US Congress, for example, is empowered to influence and in some cases direct foreign policy. But Gyngell and Wesley tell us:

... it is hard to find any significant role played in the formulation of Australian foreign policy by Federal Parliament.

Through the inquiries and reports on which it is engaged, the Senate Standing Committee in Foreign Affairs, Defence and Trade wishes to challenge this assessment.

As trade and foreign policy considerations become increasingly important features of Australia’s political and economic landscape, and as the domains of international and domestic law making become increasingly enmeshed, it is vital that Australia’s national parliament engages more fully in foreign and trade policy development. For this reason, the committee has decided to address two of its recommendations to mechanisms for drawing trade and foreign policy debate more deliberately into the parliamentary realm.

Recommendation 1 states:

*The Committee recommends that upon the commissioning of any future White Paper, the Minister for Foreign Affairs shall refer the proposal to the Parliament’s Joint Standing Committee on Foreign Affairs, Defence and Trade (JCFADT). The Joint Committee shall*
undertake broad public consultations regarding the proposed content of the White Paper, and shall report its findings to the parliament. The report shall inform the development, by government, of the White Paper, and shall be published along with the White Paper as an accompanying document.

Recommendation 2 states:

The Committee recommends that in the event of a ministerial statement by the Foreign Minister, or other major government announcement dealing with Australia's foreign or trade policies, the Senate shall refer that statement or announcement to the Senate Foreign Affairs, Defence and Trade References Committee for examination and report.

In its consideration of the 2003 white paper Advancing the national interest, the committee has examined both the conceptual and the practical aspects of the government’s foreign policy stance. It begins with some reflections on the purpose of a white paper and teases out various strands of the concept of national interest before proceeding to a more detailed critique of key features of the policy itself.

The committee recognises that how governments formulate trade and foreign policy is, to use the words of one analyst:

... deeply conditioned by the way key ministers and their trusted advisors imagine the world ... through preexisting assumptions about how the world works and about what constitutes an important development or process and what doesn’t.

From time to time in our report the committee has drawn attention to these assumptions and perspectives and, on occasions, challenges their validity.

The 2003 white paper has to some extent suffered the fate of any position paper that addresses a policy arena which is susceptible to sudden and dramatic turns of events. The presentation of the 2003 white paper had already been deferred once to accommodate major events in the period immediately preceding its publication. After its publication, further issues of significant interest to Australia elicited policy responses which the white paper had not anticipated. For the committee, this invites the question of what is the most useful approach for a government to keep the community informed about its foreign and trade policy agenda. Perhaps the only white paper likely to enjoy relative longevity is one which focuses very much on long-term strategic goals and seeks to assess the implications for Australia of likely major policy shifts in the global economic and political landscape over the next 10 or 15 years. It would also be useful for a white paper to set out what Australia’s national interests are and what the priority national interests are.

The committee sees merit in an approach to public information about foreign policy that mirrors the annual trade statement produced by the Minister for Trade. Such a document can give assessments of international issues and notify the public of relevant policy changes in a timely way. Although the Department of Foreign Affairs and Trade annual report provides a 12-monthly update on the state of Australia’s foreign relations, a discrete, stand-alone statement would be more readily accessible to citizens and would generate an occasion for particular attention from the press, which would in turn stimulate public debate. This is why the committee goes on to state, in recommendation 3:

... that the Department of Foreign Affairs and Trade prepare an annual Foreign Policy Outlook Statement containing a succinct account of issues arising in the preceding twelve months and any adjustments to policy arising from them. The statement should be tabled in the parliament by the Minister for Foreign Affairs.

The report goes on to say:

The Committee has also examined how the White paper addresses the needs of Australian diaspora, and the opportunities that exist for Australians living abroad to contribute to and to promote Aus-
tralia’s foreign affairs policies. There seems to be no clear account readily available of the numbers and disposition of Australians living and travelling abroad. For Australian citizens living overseas it is important that there are appropriate formal mechanisms by which they might continue to exercise their citizenship rights. Proper statistical records would provide an essential set of baseline data. The Committee is pleased to note that the Senate Legal and Constitutional Committee is undertaking an inquiry into the Australian diaspora.

Recommendation 4 of the committee states:

The Committee recommends that the Australian Bureau of Statistics develop mechanisms for accurately enumerating the numbers of Australian citizens living overseas, with a view to facilitating their full participation in the Australian Census.

The Senate Foreign Affairs, Defence and Trade References Committee have, in my mind, conducted a very thorough review of the government’s white paper. I congratulate Senator Cook for his again steadfast chairmanship of the committee and the production of a report of a very high quality. We are confident that the report critically analyses the main issues regarding the government’s foreign affairs and trade policy in a reasoned and thoughtful manner. I want to turn to some of the main themes of the white paper and discuss the Democrats’ position in relation to aspects of the government’s policy approach.

In terms of defining the national interest, the government white paper focused primarily on the concepts of security and prosperity. The committee report before us today critically questions the narrow focus of such a definition of our national interest, citing the need for a broader conceptual framework to recognise the myriad factors that must be considered in determining the content of such a term. It is short-sighted and irresponsible to think about these questions in purely economic terms without also considering them in the context of our social, cultural and environmental objectives.

The committee report discusses the importance of making decisions based on Australia’s interests balanced with our global responsibilities. These questions are especially important from a trade perspective. International trade does not exist in a vacuum. It must be considered in terms of the social and cultural impact it may have on our nation—
or, for that matter, on any nation. A wide-ranging free trade agreement such as the one currently being negotiated with the United States is likely to have an impact on every aspect of Australian life, from our health and education services to the content we see on our televisions. The focus of our policy agenda must be broader than mere economics.

Further, the Democrats believe that a critically important factor in the consideration of what is best for our nation is that this government is pursuing international trade agreements that will bind future governments and compromise both Australia’s national sovereignty and our ability to be able to regulate in our own national interest. An important part of acting in the national interest is retaining flexibility. Through the policy agenda this government is now setting, it is locking us into its world view for the years to come. Future governments, no matter what their political persuasion, will be constrained by the terms of these agreements and unable to freely regulate in Australia’s public interest.

The committee report also considers the fact that, while the white paper states the importance of efforts in the multilateral arena, it is also clearly a signal that the government’s preference for bilateral initiatives seems to be a continuing trend. This remains a fundamental problem, given Australia’s limited ability to devote resources to both labour-intensive functions. The white paper properly notes the potential for free trade agreements between other nations to harm our trade interests and states that many other countries are in the process of negotiating or seeking free trade agreements with our trading partners. This could pose a risk to our interests if our competitors gain preferential access to our export markets.

The white paper also makes inappropriate comparisons that reflect positively on its proposed free trade agreements. In consecutive paragraphs, the paper estimates the net economic welfare gains of a free trade agreement with the US that removes all barriers and harmonises all standards to be $40 billion over 20 years and mentions the completed Singapore-Australia free trade agreement that reduced a number of barriers. Singapore is a country that has no agriculture. The failure to remove all barriers with Singapore in the SAFTA emphasises how difficult—in fact, impossible—it will be to negotiate the removal of all barriers in relation to an Australia-US free trade agreement. The net economic welfare gain estimate of $40 billion is an extraordinarily optimistic one.

The trade minister, Mr Vail, has also made it clear that the WTO process is not where Australia wants to be investing its energies. Given the lack of progress in current rounds of negotiation, the government has decided to allocate resources into bilateral free trade agreements that go further than multilateral agreements and could potentially harm our interests with our other trading partners. The Democrats believe that the multilateral agreements offer the potential for the best possible outcomes in the long term, both for Australia and for our international neighbours and trading partners. Australia should take a leadership role in pushing the multilateral agenda rather than potentially harming our international relationships by pursuing exclusive bilateral agreements.

Whilst the executive does have the power to make treaties, it must respect the role of the parliament in being able to scrutinise its actions and make recommendations to further the interests of Australian people. Parliament should have a critical role to play. We are the elected representatives of the Australian people and I believe we have a right to be consulted and to debate any
measures entered into by this government that will so significantly affect our future.

The committee report does consider these questions and recommends that the government involve the parliament more proactively in setting foreign affairs and trade policy. However, the Democrats would like to go one step further, and we express the belief that treaties entered into by our executive must be subject to parliamentary scrutiny. This was certainly a position taken up by my former Senate colleague from New South Wales, Vicki Bourne, in her private senator’s bill the Parliamentary Approval of Treaties Bill, which we will continue to pursue.

The Senate Foreign Affairs, Defence and Trade References Committee has also recently endorsed this position in its report of the inquiry into GATS and the proposed Australia-US free trade agreement. This report, Voting on trade, concluded that the wide ranging and binding nature of modern trade agreements means that the parliament should have a greater role in all facets of the treaty making process including scrutiny and debate before ratification. So the best way for the executive to ensure legitimacy of its actions in the international arena is to consult and secure the approval of parliament in respect of proposed agreements and treaties. The Australian Senate, in particular, as a strong and independent house of review, has a critical role to play in this regard.

Finally, I would like to commend the committee’s report to parliament and record the Democrats’ congratulations to the committee—and especially to the secretariat—for their efforts in producing a report of a very high quality. I think Australia’s place in the international community is a valuable asset. We have to be vigilant in ensuring that our efforts to secure our reputation and high standing are made with careful consideration and with an eye for our national interest and the continued peace and prosperity of the entire world.

Senator BUCKLAND (South Australia) (10.38 a.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUSINESS

Rearrangement

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (10.38 a.m.)—I move:

That government business notice of motion no. 5 standing in the name of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) for today, relating to the hours of meeting for today, be postponed till a later hour.

HIGHER EDUCATION SUPPORT BILL 2003

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

In Committee

Consideration resumed from 3 December.

HIGHER EDUCATION SUPPORT BILL 2003

(Quorum formed)

The CHAIRMAN—The committee is considering the Higher Education Support Bill 2003, as amended, and opposition amendments (1) to (3) on sheet 3209 moved by Senator Crossin.

Senator CARR (Victoria) (10.41 a.m.)—The opposition does not intend to pursue each and every one of these matters at length. We simply say that there was a misunderstanding expressed in the chamber yesterday regarding the amendments. This pro-
posal simply inserts the word ‘university’ into the bill. In my judgment you cannot properly have a higher education bill that does not use the word ‘university’. The alternative approach that the government advances is that we should use the word ‘provider’. We feel that it is important that we understand that the backbone of the higher education system is the universities, and the word ‘university’ should be in the body of the bill not just in the various schedules or the definitions at the end of the bill.

The proposition advanced yesterday that use of the word ‘university’ in this context would exclude any particular provider is just not right. This bill would outline the various schedules under which various providers would be listed and the approval process is unaffected by this amendment.

Senator STOTT DESPOJA (South Australia) (10.42 a.m.)—The Australian Democrats will be supporting the opposition amendments. As Senator Carr has said, they simply change throughout the bill the term ‘higher education provider’ to ‘university’ or ‘listed higher education institution’. Similarly, they change ‘higher education providers’ to ‘university/listed higher education institutions’. I think these are good terms. I actually like the terms that Senator Carr has come up with better than the ones I have come up with, so I will be supporting Labor’s amendments.

Senator NETTLE (New South Wales) (10.43 a.m.)—The Greens will be supporting those amendments, which seek to put reference to universities back into this piece of legislation, for the reasons we articulated yesterday about public universities being key and central to the higher education system in this country rather than ‘providers’ which, of course, includes a whole range of private providers that do not provide the same comprehensive university experience as Australia’s 38 public universities. We will be supporting these amendments that put universities back into the picture and back into the central role that they play in our public education system.

Question negatived.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (10.44 a.m.)—I table additional supplementary explanatory memoranda relating to the government amendments to be moved to these bills. The memoranda were circulated in the chamber on 3 December this year.

Senator STOTT DESPOJA (South Australia) (10.44 a.m.)—by leave—I move Democrat amendments (R6) and (7) standing in my name on sheet 3189:

(R6) Division 16, clauses 16-1 to 16-50, page 10 (line 2) to page 16 (line 9), omit the Division, substitute:

Division 16—What is a higher education provider?

Subdivision 16-A—General

16-1 Meaning of a higher education provider

A higher education provider is a body corporate that is either:

(a) a university or listed provider approved under section 16-5; or
(b) a higher education provider approved under section 17-20.

16-5 When a body becomes an approved university or listed provider

A university or a listed provider is approved as such from the commencement of this Act.

Subdivision 16-B—Which bodies are listed providers?

16-10 Universities and listed higher education providers

(1) The following are universities and listed providers:
(a) a *Table A provider; and
(b) a *Table B provider.

(2) Universities and listed providers are subject to the Listed Providers Compliance Requirements as defined in Subdivision 16-C.

16-15 Meaning of a university

A *university means a body corporate that:
(a) meets *National Protocol 1; and
(b) is established as a *university, or recognised by, or under the law of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.

16-20 Table A providers

The following are *Table A providers:

<table>
<thead>
<tr>
<th>Table A providers</th>
<th>Providers</th>
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</thead>
<tbody>
<tr>
<td>Australian Catholic University</td>
<td></td>
</tr>
<tr>
<td>Australian Maritime College</td>
<td></td>
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<tr>
<td>Batchelor Institute of Indigenous Tertiary Education</td>
<td></td>
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<tr>
<td>Central Queensland University</td>
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<tr>
<td>Charles Darwin University</td>
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<td>Charles Sturt University</td>
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<tr>
<td>Curtin University of Technology</td>
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<td>Deakin University</td>
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<td>Edith Cowan University</td>
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<td>Griffith University</td>
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<td>James Cook University</td>
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<td>La Trobe University</td>
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<td>Macquarie University</td>
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<td>Monash University</td>
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<td>Murdoch University</td>
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<tr>
<td>Queensland University of Technology</td>
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<tr>
<td>Royal Melbourne Institute of Technology</td>
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<td>Southern Cross University</td>
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<td>Swinburne University of Technology</td>
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<tr>
<td>The Australian National University</td>
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<tr>
<td>The Flinders University of South Australia</td>
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<td>The University of Adelaide</td>
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<td>The University of Melbourne</td>
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<td>The University of Queensland</td>
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<tr>
<td>The University of Sydney</td>
<td></td>
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<tr>
<td>The University of Western Australia</td>
<td></td>
</tr>
</tbody>
</table>

16-25 Table B providers

The following are *Table B providers:

<table>
<thead>
<tr>
<th>Table B providers</th>
<th>Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bond University</td>
<td></td>
</tr>
<tr>
<td>The University of Notre Dame Australia</td>
<td></td>
</tr>
<tr>
<td>Melbourne College of Divinity</td>
<td></td>
</tr>
</tbody>
</table>

Subdivision 16-C—Listed Providers Compliance Requirements

16-30 Basic requirements

(1) A *Table A provider or *Table B provider must comply with the requirements of this Act, the regulations and the Guidelines made under section 238-10.

(2) A *Table A provider or *Table B provider must provide information to the Minister in relation to the affairs of the institution in accordance with the requirements of this Act.

(3) A *Table A provider or a *Table B provider’s administrative arrangements must support the provision of assistance under this Act.

16-35 University or listed higher education provider to provide statement of general information

(1) A *Table A provider or *Table B provider must give to the Minister such statistical and other information that the Minister by notice in writing
requires from the institution in respect of:

(a) the provision of higher education by the provider; and

(b) compliance by the provider with the requirements of this Act.

(2) The information must be provided:

(a) in a form approved by the Minister; and

(b) in accordance with such other requirements as the Minister makes.

(3) Nothing in subsection (1) or (2) shall require a provider to provide the names and addresses of its students other than for use to confirm that the required *student identifier has been correctly supplied.

16-40 Notice of events that affect a university or listed higher education providers ability to comply with conditions of Commonwealth assistance

A Table A provider or Table B provider must in writing inform the Minister of any event affecting:

(a) the provider; or

(b) a *related body corporate of the provider;

that may, significantly affect the provider’s capacity to meet the conditions of grants under this Chapter or the compliance and contribution requirements.

(7) Page 16 (after line 9), after Division 16, insert:

Division 17—Other non listed providers

17-10 Application

(1) A body corporate may apply in writing to the Minister for approval as a *higher education provider.

(2) The application:

(a) must be in the form approved by the Minister; and

(b) must be accompanied by such information as the Minister requests.

17-15 When a body ceases to be a higher education provider

A body corporate that is not a *listed provider or a *higher education provider ceases to be a provider if the provider’s approval is revoked or suspended under Division 22.

17-20 Approval by the Minister

(1) The Minister, in writing, may approve a body corporate as a *higher education provider if:

(a) the body:

(i) is established under the law of the Commonwealth, a State or a Territory; and

(ii) carries on business in Australia; and

(iii) has its central management and control in Australia; and

(b) the body is either:

(i) a *self-accrediting provider; or

(ii) a *non self-accrediting provider; and

(c) the body either fulfils the *tuition assurance requirements or is exempted from those requirements under subsection 17-25(2); and

(d) in the case of a non self-accrediting provider, the body meets the additional requirements under section 17-30; and

(e) the body applies for approval as provided for in section 16-40; and

(f) the Minister is satisfied that the body is willing and able to meet the *quality and accountability requirements.

(2) A self-accrediting provider is a body corporate, other than a *university, whose name is included in the *Australian Qualifications Framework Register as the name of a higher education institution empowered to issue its own qualifications.

(3) A non self-accrediting provider is a body corporate:
(a) whose name is included; or
(b) who owns or controls a business name that is included;
in the list of Non Self-Accrediting Higher Education Institutions contained in the Australian Qualifications Framework Register, as the name of an institution approved by an authorised accreditation authority to issue one or more higher education awards.

17-25 The tuition assurance requirements
(1) The tuition assurance requirements are that, on the date of an application under section 16-40:
(a) the body corporate making the application complies with the requirements for tuition assurance set out in the Higher Education Provider Guidelines; or
(b) if the guidelines do not set out such requirements, the body has in place arrangements that the Minister is satisfied will ensure, for any person enrolled in a course of study with the body, that should the body cease to be able to provide that course:
(i) the person will be able to enrol in a similar course with another higher education provider and receive full recognition by that other provider for any successfully completed units of study undertaken as part of the course of study with the body; and
(ii) the person will be able to receive a payment equivalent to any student contribution amount or tuition fee that has been paid for a unit of study in that course with the body that the person has not completed because the body ceased to be able to provide the course.

(2) The Minister may, in writing, exempt a body corporate from the tuition assurance requirements.

17-30 Additional requirements for non listed providers
The additional requirements for non listed non self-accrediting providers are that the body:
(a) is in a State or Territory that the Minister is satisfied has legislation that complies with the National Protocols; and
(b) offers at least one course of study that leads to a higher education award, and that course is accredited by a State or Territory under National Protocol 3.

17-35 Provider to provide access to Departmental officers etc.
(1) The Secretary may determine in writing arrangements, in respect of a non listed higher education provider, for access by:
(a) APS employees in the Department who are authorised under subsection (3); or
(b) any other persons who are engaged to perform services for or on behalf of the Commonwealth, and who are authorised under subsection (3); to any premises or records of the provider for the purpose of conducting audit and compliance activities related to this Act.

(2) The provider must comply with the arrangements.

(3) The Secretary may authorise in writing:
(a) APS employees in the Department; or
(b) any other person who is engaged to perform services for or on behalf of the Commonwealth; for the purposes of subsection (1).
The revised amendments relate to splitting higher education providers into two divisions—that is, we have universities, listed providers and non-listed providers. We seek to insert a new division to provide for the definition, approval and regulation of non-listed providers.

As has already been touched on in this debate, particular in yesterday’s discussion, these amendments are part of our attempt to recognise the broad and unique role that universities play. We seek, with these and other amendments, to ensure academic freedom, institutional autonomy and the vital role of universities as a critic and conscience of our society. We have sought to remove ministerial discretion over approval of higher education providers and we seek also to ensure that any recommendation, determination or decision that is taken under the act recognises that unique character and role of an institution.

Our amendments recognise the different roles of table A, table B and other providers by seeking to list them separately and providing different regulation of them. The government proposal, which is sort of a one-size-fits-all definition of higher education providers, is not acceptable to us. We want to ensure that universities remain as public institutions which have a long and proud history in Australia and provide a public service to the population that goes beyond the issue of simply issuing degrees. We do not want to reduce universities to corporations that merely seek to compete for students and compete for government subsidies. We want to ensure that public institutions are recognised and that that role is enshrined in legislation.

Rather than separating providers as self-accrediting and non-self-accrediting, we propose that universities and similar providers will be listed as either table A or table B and thus separated from other providers who may not be listed. We want to ensure that universities and listed higher education providers are not subject to the same processes for approval or revocation of provider status and quality and accountability requirements as those applying to other higher education providers. Table A providers will be eligible for all Commonwealth funding measures and table B providers will be eligible for limited Commonwealth funding. We believe that these amendments and these aims are essential to preserve some of the critical features of a university institution, namely a public university institution, and that includes preserving academic freedom and institutional autonomy.

We believe that all along this bill has failed to recognise the key, broad role that universities have in our society. Many of the government provisions, particularly those set out in chapter 2, should not apply to universities as opposed to other providers of higher education. We believe that universities already meet many of the provisions or conditions that are set out in the bill through a range of processes including compliance with the annual profile discussions, the Australian University Quality Agency audits, the requirements of their establishing acts and, of course, other state, territory and Commonwealth acts and statutes that are made under these.

We believe that university obligations are also established or embodied in the protocols, particularly in protocol 1 of the national protocols for higher education approval processes. Protocol 1 sets out what constitutes a university and its power to grant degrees. The protocol also covers a number of other important distinguishing features. The
proposed separation in our amendments, we believe, is consistent with the provisions of the proposed Commonwealth Grants Scheme which applies to table A providers with the exception of national priority places. It is also broadly consistent with the providers listed in table A and table B in the bill. We are strong supporters of enshrining that element of public university education in this legislation. A number of our amendments will go to those aims to which I referred: academic freedom, institutional autonomy and the role of universities but in particular, in this case, the separation of providers and enshrining those public university providers in the bill in a very clear way.

Senator HARRIS (Queensland) (10.50 a.m.)—I rise to briefly make some comments regarding Democrat amendments (R6) and (7). As Senator Stott Despoja has indicated, the list will actually delineate and separate the different institutions. One Nation believes that that will further divide the sector, rather than unite it, and to some degree may adversely impact on universities that are public institutions and universities or higher education providers that are private providers. One Nation does not believe that that is in the overall interests of the actual higher education sector. I ask Senator Vanstone: in looking at the list that has been given to us by the Democrats, what are the actual differences between that and the government’s table A as it stands in the bill?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (10.52 a.m.)—I will get some advice on that; someone will make a comparison for you. If someone else would like to make a thoughtful contribution in the meantime, I am sure it would assist everybody.

Senator CARR (Victoria) (10.52 a.m.)—I indicate to you that the opposition will be supporting the Democrat amendments.

Senator NETTLE (New South Wales) (10.52 a.m.)—I indicate that the Greens will also be supporting these amendments by the Democrats, for the reasons I have already articulated in this debate.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (10.53 a.m.)—Senator Harris, I understand that the answer to your question as to the difference between the two tables—if that was the limit of your question—is simply that they are in a different order. One is alphabetical and one is not.

Question negatived.

Senator STOTT DESPOJA (South Australia) (10.54 a.m.)—I move Democrat amendment (4) on sheet 3189:

(4) Clause 3-5, page 5 (lines 10 to 15), omit the clause, substitute:

3-5 Grants for higher education assistance
(Chapter 2)

Chapter 2 sets out who are higher education bodies and for regulatory and/or funding purposes distinguishes between universities and listed higher education providers and non listed higher education providers. The Chapter provides for the following grants and payments:

(a) grants under the Commonwealth Grant Scheme;
(b) other grants for particular purposes;
(c) grants for Commonwealth scholarships.

I have pre-empted some of the explanation for this amendment with my earlier comments. This relates to the grants for higher
education assistance, and I commend it to the chamber.

Question negatived.

Senator STOTT DESPOJA (South Australia) (10.55 a.m.)—The Democrats oppose subdivision 19-F in the following terms:

(23) Subdivision 19-F, clauses 19-85 to 19-105, page 24 (line 9) to page 26 (line 19), TO BE OPPOSED.

As this was not on the running sheet, it has caught me by surprise, but it is in relation to the ability of universities to set their own fees. I thought we would be dealing with this somewhat later in the program. Nonetheless, I think it is self-explanatory. The Australian Democrats’ view on public university funding and publicly funded education for Australians regardless of their bank balances, and based on their brains instead, is well known. I commend this measure to the chamber.

I could talk about it for much longer. As honourable senators know, I do not believe in pricing students out of higher education and I do not believe that universities require this flexibility. Having said that, I recognise the dire financial straits in which many universities find themselves, largely as a consequence of underfunding by successive governments, including the former Labor government—and particularly due to a lack of indexation provided by that former government—but also as a consequence of funding cuts and changes by this current government. I do not believe the way to ensure adequately funded, quality, affordable education in Australia today is by cost shifting to students.

I believe that opposing this subdivision is important. I would like all senators to put their views on record, which would save us dividing. I believe that that flexibility is not required, should not be required and should be removed from the legislation, hence my attempt on behalf of the Democrats to oppose that subdivision which relates to universities and flexibility for charging fees. I feel strongly about this issue but, in the interests of time, I am going to restrain my comments—certainly within this place. I am anxious to see who will vote for the opportunity for students to pay not only up-front full cost fees but up to 25 per cent on top of the HECS fees that they already pay. Of course, we all know that we have amongst the highest fees and charges in the world for public university education. This is one of those line in the sand issues.

Senator Carr—are you dividing on this one?

Senator STOTT DESPOJA—I will divide, unless we have an indication from all senators of how they are voting. I do want to save time. I will not be dividing on a number of issues, but this is an important one and, as not all senators who have a key vote on this are present, I give you notice that I will be dividing unless we have that indication.

Senator HARRIS (Queensland) (10.58 a.m.)—Senator Stott Despoja is correct when she indicates that this is one of the major issues in the whole legislation. To clearly articulate One Nation’s position, we need to look at the legislation overall and look at the issues where the government have substantially moved from their original position. We need to look, particularly in this case, at the additional benefits for, or the improvement in the situations of, the students and balance that against supporting the government’s proposal. The benefits to the students that have been able to be achieved during this negotiation period with the government include the scholarships that will be available to university students no longer being taken into account in relation to the income tests. That is a substantive improvement.

We also have to look at the level at which HECS will actually cut in, because this is the
basis of Senator Stott Despoja’s amendment. We now have the situation where, in the year 2004-05, the cut-in for the repayment of HECS is set at $35,000 and indexed from that point. So there has been quite an amazing change from the current cut-in, which I believe is around $24,000. When we look at the average salary for students leaving the university at present—that is, approximately $37,500—a great number of those students are immediately required to begin to repay their HECS fees. The government has brought that repayment level almost up to and equivalent to the average salary that students receive on exiting university between 2004 and 2005. In agreeing to support the government’s proposal to increase HECS payments, we have to look at the entire bill as a package and at the benefits that it will deliver not only to the universities themselves but also to the students. It is on that basis that One Nation is indicating very clearly its support for the government’s proposal and that it will not support the opposition of subdivision 19-F proposed by the Democrats.

Senator LEES (South Australia) (11.02 a.m.)—This is one of those issues where, in an ideal world, it would be different—or I would certainly like it to be different. I estimate that we would like around $1 billion more to go to our universities. This bill guarantees just over $1.8 billion in the first four years, rising to about $2½ billion as we move to the out years, without the indexation that we have structured into the bill. As Senator Harris has said, to offset some of the additional costs we have a raft of other measures that we have ensured are in place in this legislation. However, let us put it down in very simple terms: without this measure this bill will go nowhere.

I am well aware of the pressures of the extraordinarily large numbers of students attending lectures—a lecture that my daughter went to had over 600 students and the doors were shut for safety reasons after about 380 students entered and the remaining students had to go to the library to get the tape. That is how they did what was a first-year subject. No wonder we have such high dropout rates. Tutorials either do not exist at all or have so many students in them that you basically have to ration who gets the question and who is actually given some time to work through some of the issues that students are expected to be prepared to debate and discuss.

The question for those of us who have been trying to work with the government to get some money to the universities is: do we make some compromises on those issues that we would prefer not to see? I would prefer to see absolutely no increases in HECS whatsoever, but the reality is that this government is determined to see students pay more. Come the election, I hope that higher education is one issue that is taken to the electorate and very clearly argued between the major parties as to what it is reasonable to expect students to pay, but also what it is reasonable to expect the community to pay, given that there is an enormous community benefit in having an educated population—and not just in having an educated population but in making sure that it is the best and brightest students that actually get there and get the opportunities.

I will have more to say on that as we proceed and look at some of the other measures we have put in, hopefully, to increase the participation rate of those students from disadvantaged backgrounds. In some cases it simply means that they are from low-income families, but in other cases it is rural and remote students who at the moment have a
participation rate at about half that of metropolitan students. On this measure, I would prefer to have no increases in HECS, but it is this government’s determination and this government’s choice, given that universities are not going to get all the money they need, only some of it.

Senator CARR (Victoria) (11.05 a.m.)—The opposition will be supporting this measure. We have a number of our own, and I will speak more at length on those issues. Senators will be entertained by the defence that some senators will now advance for their craven capitulation to the government on this basic question. Again, I am surprised that some senators have a very different view from the opposition’s on the way in which the world works. This is a proposition that goes to the deregulation of fees; it does not go to the issue of HECS thresholds. The defence that has been put to us today was on an entirely separate matter. It would be helpful, in arguing the case, that senators were at least relevant—unless they are so confused by the government’s mumbo jumbo on this that they do not know the difference, and I suspect that that is a possibility. Senator Harris managed to make the front page of the Australian newspaper with a letter that he wrote fairly recently to the Queensland University of Technology Student Guild. He said that One Nation would not support the main planks of the government’s higher education package. That is a very brave sentiment, Senator Harris. He said:

I oppose it on the grounds it is not acceptable to impose on young academics a substantive debt for the major part of their lives.

That is a very brave sentiment that seems to have been abandoned in the quest to get agreement with the government. In his speech in the second reading debate on 1 December—relatively recently—Senator Harris said:

... with an increase in fees, the financial obstacles faced by students will be insurmountable. A first degree will cost a second mortgage.

He went on to say:

Ultimately the arts, culture, history, politics and literature will be the sacrificial lambs. Less popular courses will be underfunded.

So he knows the consequences of this proposal but now appears to be confused in his defence of the government’s policies. He said:

The prospect of shouldering thousands of dollars worth of debt even before starting a career is guaranteed to deter many students from entering universities.

That was his position on 1 December and today we hear this pathetic attempt to defend the government’s position based on a misunderstanding of what this clause actually does. One can only be troubled if that is the basis on which we are dealing with higher education in this country today.

Senator STOTT DESPOJA (South Australia) (11.08 a.m.)—There is no misunderstanding of what this clause actually does; it is clear. This will put additional debt on the students and future students of Australia. People in this chamber dare to talk about being determined to make the government pay more towards the costs of education and make the community contribute but, at the same time, they are helping this government increase fees by 25 per cent, and we know that most institutions are going to do that. They have said it. Their council meetings are ready and their senates are ready to discuss this issue. The Vice-Chancellor of the University of Sydney, Professor Gavin Brown, has already said that they will increase the fees. I understand that universities need this funding, and I think it is really amusing that some in this place have been fobbed off by back-ended funding that mostly kicks in in 2007 as some way of defending this package.
which will not assist universities in the way that they require.

As for falling for the indexation structures, what indexation structure is in this bill? From the amendments that I have seen, we structure an inquiry in this bill that will look into indexation after 2007-08. What a joke! I know people have to have something to show for their deals—but putting into law that there will be an inquiry into indexation when we all recognise it is the big issue? Indexation and fees, stupid—and that is not directed at you, Chair; that is just borrowing from that well-known American expression—that is the issue. When we talk about—and some senators have in this place—the next election, what about remembering the election platform some of us were elected on? The Democrats went to the polls in 1998 and before that, in 2001 and in every other election campaign I can remember promising to support publicly funded education. Remember the last election in which you were voted in, senators, not just the upcoming one. In the upcoming election campaign, the university students and the aspiring students of this nation will make very clear how they feel about this additional debt.

I say to Senator Harris that I take your point about the threshold. It is an important part of this package and long overdue. It is one we would not have been debating if the government had not made the change in 1996 to lower the threshold at which graduates begin to repay their HECS debts—$37,000, $36,000, $35,000 is an improvement. Average weekly earnings is the average that most people have been hoping for and begging for, but average weekly male earnings would be better, and I will move an amendment to that effect as well. But, yes, we would not have had to have this debate if we had not had that change in 1996, where the government was supported by two independent senators.

In terms of discussion of an ideal world, it is a good refuge when in fact, if people vote against this amendment or for the government legislation, the cost shifting to students will be unbearable for many, particularly those from disadvantaged backgrounds. The cost shifting that is taking place reflects no real balance between what the public contributes or the community pays and what students pay. We all know the figures—I hope we do—and the fact that law students are already paying the majority cost of their degree. If this legislation goes through, they will be paying more than 100 per cent of the costs of their law degree. Obviously I balance that with the fact that there are more expensive courses out there to which student contribution will be less. But, again, I remind the chamber that we do know that fees and charges are a psychological and financial disincentive to participate in higher education, particularly for those from lower socio-economic groups which apparently people are so concerned about, but token scholarships are not going to help them. I will be dividing on this amendment.

**Senator Nettle** (New South Wales) (11.12 a.m.)—The Greens will be supporting this opposition to subdivision 19-F because the Greens do not support the deregulation of higher education fees for students. The Greens do not support students having to pay more for their higher education. Senator Lees said before that the clear indication from this government is that they want students to pay more for their higher education. Sim-
ply because the government senators want students to pay more for higher education does not mean that every other senator should also have to sign up to asking students and their families to pay more for higher education.

I know—and we had the debate in this chamber—that many people have been listening to the vice-chancellors in this debate, and on this particular issue the vice-chancellors are keen to be able to deregulate student fees so that students are making up for the contribution that the government and the previous government have taken out over the many years, thereby underfunding the university sector. Simply because the government pulls out public funding does not mean that the burden should then be passed onto the shoulders of students and their families to pay for higher education.

There is danger in falling into a trap of believing that the vice-chancellors represent the higher education sector. They are one of the players in the higher education sector. Students are the stalwarts of the higher education sector. They are the people who learn at university and have the experience of being at university and engaging in intellectual pursuit. Yet, thanks to this government, they are being asked to pay through the teeth for that privilege—as this government puts it—of being involved and having the capacity to go on to higher education.

Earlier in the debate, Senator Harris raised the issue about the HECS threshold. I agree with the sentiment of Senator Carr when he said that what we are voting on here is whether university fees should be deregulated—not the issue of at what point students should be contributing. This is an interesting one for us because the Greens do not support the current HECS system whereby students have to individually contribute to their higher education fees rather, as they already do, through a progressive taxation system. Even if we are to talk about the threshold—and we will later in this debate—this government and this minister argue that students should make a private contribution to the opportunity they get at university. That argument about people paying for the private benefit that they get from higher education is to do with when they are earning a significant amount of money for that to be considered a private benefit.

When HECS was introduced in 1998 the threshold for people repaying was average weekly earnings. Yet this government is proposing—and is proposing to senators in here—that an achievement has been made by increasing the HECS threshold. It is not anywhere near average weekly earnings—in the realm of $48,000—before people are considered to be getting a private benefit from being at university, that is, before they are earning more money than the average people in our society. Even the argument of bringing the HECS threshold into this particular issue of private benefit, as the government puts it, does not stand, because people are not receiving that private benefit. They are not getting more than the average weekly earnings before they have to start paying back the HECS payments that this government is charging.

Senator Lees also talked about the conditions in universities and the overcrowding that is being experienced there. Asking students to pay more does not necessarily equate to removing the overcrowding that occurs in university lecture theatres. It is possible that asking students to pay more means fewer students will be able to go to university and therefore the lecture theatres will not be so crowded. But it does not logically follow that allowing universities to charge students more money means that they will direct that money into ensuring that lecture theatres are not overcrowded. This, as
Senator Stott Despoja put it, is a fundamental line in the sand issue. Should students pay more? Should students make up the gap as governments pull out funding from the higher education sector? The Greens say no and we will be supporting the amendments that say this, such as this one by the Democrats.

Question put:
That subdivision 19-F stand as printed.

The committee divided. [11.21 a.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………… 34
Noes…………… 32
Majority………. 2

AYES

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

NOES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Bolkus, N.
Brown, B.J.  Buckland, G. *
Campbell, G.  Carr, K.J.
Cherry, J.C.  Collins, J.M.A.
Conroy, S.M.  Cook, P.F.S.
Denman, K.J.  Evans, C.V.
Faulkner, J.P.  Forshaw, M.G.
Greig, B.  Hogg, J.J.
Kirk, L.  Ludwig, J.W.
Lundy, K.A.  Mackay, S.M.
Marshall, G.  McLucas, J.E.
Murray, A.J.M.  Nettle, K.
Ridgeway, A.D.  Stott Despoja, N.
Webber, R.  Wong, P.

* denotes teller

Question agreed to.

Senator STOTT DESPOJA (South Australia) (11.25 a.m.)—I seek leave to move amendments (24), (25), (R26) and (27) on sheet 3189 Revised together. Unless there is support for one set and not the other, that might save time.

Senator Carr—We will be voting for all of those, yes.

Senator Vanstone—I hope I am not stating the obvious, but to indicate the government’s generosity in this respect, Senator, if you would like to put all your amendments in a block to save time we would be happy for you to do that.

Senator STOTT DESPOJA—I have never moved 132 amendments in a block, so I think I will start with the rather modest four. As many as I can merge together I will do so.

Leave granted.

Senator STOTT DESPOJA—I move:

(24) Heading to Division 22, page 27 (lines 2 and 3), omit the heading, substitute:
Division 22—When does a body cease to be a non listed provider?

(25) Division 22, clauses 22-1 to 22-40, pages 27 (line 4) to 32 (line 7), omit “higher education” (wherever occurring), substitute “non listed or other”.
Clause 30-1, page 34 (lines 11 to 14), omit subparagraph (1)(a)(ii), substitute:

(ii) a *Table B provider; and

Clause 30-1, page 34 (lines 20 and 21), omit “higher education provider that is not a *Table A provider,” substitute “*Table B provider”.

These amendments relate to the restructuring of the bill to recognise the importance of listed providers. We believe, as I have indicated, that the minister should not have the power to revoke the approval of a listed provider and this revocation must require an amendment to the act. Listed providers are accountable through their establishing acts, compliance with annual profile discussions et cetera, the audits and other state, territory and Commonwealth acts to which I have referred previously.

Amendments (26) and (27) relate to table B providers being specified as eligible for grants under this part and remove the ability for providers to be made eligible for grants under this part through the CGS guidelines. Amendment (27) restricts the provision of grants to non-table A providers to only table B providers for the purpose of national priorities.

Question negatived.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.27 a.m.)—I move government amendment (1) on sheet PA234 Revised:

(1) Clause 2-1, page 4 (lines 3 to 16), omit the clause, substitute:

2-1 Objects of this Act

The objects of this Act are:

(a) to support a higher education system that:

(i) is characterised by quality, diversity and equity of access; and

(ii) contributes to the development of cultural and intellectual life in Australia; and

(iii) is appropriate to meet Australia’s social and economic needs for a highly educated and skilled population; and

(b) to support the distinctive purposes of universities, which are:

(i) the education of persons, enabling them to take a leadership role in the intellectual, cultural, economic and social development of their communities; and

(ii) the creation and advancement of knowledge; and

(iii) the application of knowledge and discoveries to the betterment of communities in Australia and internationally;

recognising that universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university’s overall performance and its ongoing independence; and

(c) to strengthen Australia’s knowledge base, and enhance the contribution of Australia’s research capabilities to national economic development, international competitiveness and the attainment of social goals; and

(d) to support students undertaking higher education.

Question agreed to.

Senator CARR (Victoria) (11.28 a.m.)—The opposition have amendments on these matters. We will be moving those. We think they are better; nonetheless, given the circumstances of today we will support the Democrat amendments. I understand that
there are already arrangements in place to see them defeated. I seek leave to move opposition amendments (4) to (6) on sheet 3209 together.

Leave granted.

Senator CARR—I move:

(4) Clause 2-1, page 4 (line 11) after “a”, insert “more”.

(5) Clause 2-1, page 4 (line 16), at the end of the clause, add:

; and (d) in relation to universities, to carry out the objects in paragraphs (a) to (c), recognising that each university is an independent and autonomous institution that has its own objects established by statute and its own distinct history and mission and is an institution which:

(i) promotes free and open inquiry and upholds democratic principles through encouraging and participating in informed public debate on a wide range of social, cultural and economic matters affecting the nation, region and world;

(ii) governs its own affairs, including the composition and functions of its governing bodies and its workplace and other relations with its staff, within the statutory framework under which it is established or regulated;

(iii) is a centre of free inquiry which advances knowledge through teaching and scholarly research promoted at the highest standards;

(iv) provides degree and post-graduate education to serve the needs of the professions and to provide highly skilled graduates able to serve the needs of society;

(v) promotes the importance of learning among its students and in society generally;

(vi) engages with its community in ways that enhance the social, economic and cultural life of the community;

(vii) is committed to academic freedom, which includes promoting the questioning by its staff and students of received wisdom and the putting forward by those staff and students of new ideas and controversial or unpopular opinions;

(viii) is free to engage in research as are its staff and students; and

(ix) is free to regulate the subject-matter and content of its courses including determining what those courses are and the assessment process for those courses.

(6) Page 4 (after line 16), at the end of Division 2, add:

2-5 Promoting the objects of the Act

A person or body exercising any power or function under this Act shall do so in a manner which promotes the objects of this Act.

These amendments go to the issue of ensuring that the objects of the bill involve a reference to a more highly educated and skilled population. In essence, they seek to improve the wording in the bill to that effect.

Senator STOTT DESPOJA (South Australia) (11.29 a.m.)—The Australian Democrats will be supporting the changes proposed by the opposition in relation to the objects of the act. A number of these principle issues we have discussed previously: the intent by some in this place to enshrine fundamental principles of academic freedom, institutional autonomy and the search for truth, as opposed to the search for funds, into the objects so that we do not lose sight of what a university is and should be—institutions that have created the great thinkers of this nation. Unfortunately, changes to legislation proposed by the government will see an erosion of
some of those fundamental principles. We have in many ways tested the views of the chamber on this already. I do not mean to reflect, Mr Temporary Chairman Watson, on a vote of the Senate, but yesterday was a sad day for universities. The wording in the proposed amendments, particularly the ones that have been put forward by Senator Carr, is acceptable. Whilst the Democrats are moving similar amendments, there are aspects of the opposition’s amendments that encompass them and that I find more attractive. So they have our support.

Senator NETTLE (New South Wales) (11.30 a.m.)—The Greens strongly support these amendments put up by the ALP. That is because we recognise, as they state in the amendments, that each university is an independent and autonomous institution that has its own objects established by statute, its own distinct history and mission. The amendment goes on to outline the details of why we recognise the independence of institutions such as universities. So we strongly support these amendments.

Senator HARRIS (Queensland) (11.31 a.m.)—On perusal of the amendments, to a large degree they duplicate the MCEETYA protocols, which set out the requirements of the universities. So, in keeping with my comments earlier, One Nation will not support the amendments. The reason for that is that we are starting to put into federal legislation requirements that are currently covered by the protocols. Those protocols are brought to fruition by agreement of all the states and take into consideration the requirements not only of universities but also of all learning institutions. So it is not desirable to put into federal legislation issues that are already covered by those protocols.

Senator CARR (Victoria) (11.33 a.m.)—Again, I am staggered by the line of argument being presented here. These are amendments which One Nation says are in line with the national protocols of what it is to be a university. Not only are they consistent with that, but One Nation also acknowledges that they have been accepted by every state and territory in the Commonwealth. Yet they are not good enough to put into the Commonwealth higher education funding bill. What an extraordinary proposition! These are the principles embedded in every piece of legislation across the Commonwealth, in every jurisdiction, but they are not good enough for the Commonwealth.

At the back of this chamber is a representative of the Australian Vice-Chancellors Committee. You would have thought that the Australian Vice-Chancellors Committee, which has been invited onto the floor of the Senate, would have had the decency to explain the simple fact, the simple proposition, that if it is good enough for every piece of legislation in the Commonwealth, in every jurisdiction, it ought to be good enough for this parliament. To be told that because someone else has done it we do not have to do it is an extraordinary notion. This is a fundamental principle about what it is to be a university. There are three simple ingredients. A university in Australia is a place that pursues excellence in teaching, in research and in community responsibility. That is what our amendments go to. That means that you cannot have teaching-only institutions. That means that you cannot have second-rate institutions operating as a matter of policy. That means that the Commonwealth government is obliged to protect excellence in our higher education system. But that is not good enough for One Nation because they have this bizarre notion of what education is. This is an extraordinary proposition. I am staggered that the Vice-Chancellors Committee can provide such appalling advice.

Senator HARRIS (Queensland) (11.35 a.m.)—That is an amazing outburst from
Senator Carr. He is destroying his own argument with his comments. It is very clear what he has said, that the protocols do include all of these requirements, so there is no necessity for federal legislation to duplicate them. This issue is clearly defined, as I said, in the protocols. As for the quip about poor advice from the AVCC, I would like to put it very clearly on record that my comments on this matter did not come from the AVCC. So through you, Mr Temporary Chairman, to Senator Carr, he is incorrect in inferring that this is the position of the AVCC. It is not. All of these issues are covered by the protocols; they are there. It is not desirable for the federal government to implement or bring into legislation issues that are already adequately covered by agreement of all the states.

Senator STOTT DESPOJA (South Australia) (11.37 a.m.)—If you do not put into the objects of the act the role, the obligations and the accountability of universities, where else do you put them? We are rewriting the Higher Education Funding Act today, albeit in a very hurried, arguably sham and farcical, fashion, but have we honestly lost sight of the core issue—the object of the act as it relates to what a university is? Senator Carr’s amendments, which the Democrats support, seek to enshrine some fundamental principles. Are we really throwing all intellect, all sense of principle and all aspirations out the window today? Amendment (5) states that a university is an institution which ‘promotes free and open inquiry and upholds democratic principles through encouraging and participating in informed public debate’ et cetera; which ‘governs its own affairs’; which ‘is a centre of free inquiry which advances knowledge to teaching and scholarly research promoted at the highest standards’. Are these such offensive principles that people will not put them into the act? Isn’t this the core of what we are debating—the future of the nation and the institutions that will provide the shape and the intellect for that future nation? If we do not support this, can we please pack up and go home now. It is one thing that we have just agreed to give unlimited fee-charging arrangements to universities—and I know we will deal with the cap later—but do we honestly not care about what an institution is supposed to do? Are we here merely to shape the regulatory, accountability and quality frameworks of universities?

This is a joke! This is a good amendment, which is why I am happy to support it in favour of an amendment that the Australian Democrats had drafted. It has been framed after consultation with most groups in the sector. I know that vice-chancellors are aware of this amendment and I know many of them have indicated to me their support for it, because this is about the principles that they espouse—the job to which they have signed up: free thought, inquiry, excellence and quality. And we are not going to put it in the act that governs our institutions! If we just want to talk about the money and the fee-charging arrangements, let us get on with it. But if we have lost any sense of what this nation and university education is founded upon, then this debate is a sham.

I have just had an email from one Internet watcher who says, ‘Why are you making it so easy for them?’ We are not making it easy for the government; we are just recognising that there are a lot of amendments and we have got to get through them. We also recognise that it has been indicated in advance to us that a lot of our amendments will not pass. I am not surprised by the issue of fees: I know that there are different views on whether students should be charged fees, and we have tested who believes in additional fees and debt for students and who has not.
But surely this is not a test; surely this one is the easy one: democracy, principles, quality, teaching, research and knowledge. Why is this a difficult one? I do not understand. What unfair and inappropriate constraints does it put on the minister? Let us hear from the government. I have heard from One Nation and Senator Harris’s concerns over duplication and the fact that the MCEETYA protocols deal with it. Stuff the protocols! As much as I believe in them, I want it in the act. I am a citizen who wants enshrined in the Commonwealth legislation that determines and governs the universities that we as taxpayers pay money to what universities stand for. If they are just money-making institutions and revenue-raising measures for government—because, remember, we have got $9 billion worth of student debt already—let us say it. But if we still believe in the pursuit of knowledge, free and open inquiry, democracy and an enlightened society, then put it in the act.

Senator McGauran—You sound like Voltaire.

Senator STOTT DESPOJA—Thank you, Senator McGauran. My goodness, should I at this stage say that I defend to the death your right to say it. But the point is, Senator McGauran, how do you know about Voltaire? It is through reading, through university, through the education that we have been lucky enough to have.

Senator Harradine interjecting—

Senator STOTT DESPOJA—No, Senator Harradine, you are so right: you do not have to go to university. I was talking about Senator McGauran’s particular advantage through education. No-one has to go to university, but for those in this nation who do, let us at least explain what universities do, what they stand for, why we have them and why we pay for them. This is a wonderful amendment. Can we just agree to have objects that reflect those aspirations which are, I hope, those of all citizens?

Senator CARR (Victoria) (11.42 a.m.)—We have now discovered from the One Nation senator here that this is not the advice that he is getting from the Australian Vice-Chancellors Committee. I am very pleased to hear that, because up until this point we have been told that the reason that Independent senators are voting the way they are is because of advice from the vice-chancellors. So it seems that the vice-chancellors’ advice is not infallible—and I would have to agree with that—but in this particular matter I would be shocked that the vice-chancellors would not agree that this matter should be written into legislation. The proposition is simple: every state and territory in this Commonwealth is required to impose the national protocols in their legislation. My reading of those protocols is that the Commonwealth is equally obliged to do that. But the proposition we are having advanced here today is that these are very fine principles, they are supposed to inform decision makers, but they only apply to state jurisdictions. That is complete and total nonsense.

What we are suggesting—which I think has been conceded—is very simple, very clear, very concise words about what it is to be a university, acknowledged around the country to be the basis on which our universities actually operate and inserted into state legislation. I do not recall that there are too many jurisdictions that have not actually imposed the national protocols in legislation. That is the pattern. But it is not good enough for the Commonwealth. What is wrong with this amendment? If it is the case that the position that is being taken here by Independent senators is not based on the merits of the argument, then we should have that explained. If the argument really is: ‘Well, we have a commitment to the government; we will not be supporting any opposition
amendments,’ let us have that out, too. Let us have that on the table. We would save a lot of time and we will know the truth.

Question put:
That the amendments (Senator Carr’s) be agreed to.

The committee divided. [11.49 a.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………  31
Noes…………  34
Majority……… 3

AYES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkas, N.
Brown, B.J. Buckland, G.
Campbell, G. Carr, K.J.
Cherry, J.C. Collins, J.M.A.
Crossin, P.M. * Denman, K.J.
Evans, C.V. Faulkner, J.P.
Forshaw, M.G. Greig, B.
Hogg, J.J. Hogg, J.J.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. Marshall, G.
McLucas, J.E. Murray, A.J.M.
Nettle, K. Ray, R.F.
Ridgeway, A.D. Stephens, U.
Stott Despoja, N. Webber, R.
Wong, P.

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

PAIRS
Conroy, S.M. Humphries, G.
Hutchins, S.P. Alston, R.K.R.
Moore, C. Knowles, S.C.
O’Brien, K.W.K. Hill, R.M.
Sherry, N.J. Macdonald, I.

* denotes teller

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.52 a.m.)—by leave—I move Democrat amendments (2) and (3) on sheet 3189:

(2) Clause 2-1, page 4 (line 16), at the end of the clause, add:

; and (d) in relation to universities, to carry out the objects in paragraphs (a) to (c) recognising that each university is an independent and autonomous institution that has its own objects established by statute and its own distinct history and mission and is an institution which:

(i) governs its own affairs, including the composition and functions of its governing bodies and its workplace and other relations with its staff, within the statutory framework under which it is established or regulated; and

(ii) is a centre of free inquiry which advances knowledge through teaching and scholarly research promoted at the highest standards; and

(iii) provides degree and postgraduate education to serve the needs of the professions and to provide highly skilled graduates able to serve the needs of society; and

(iv) promotes the importance of learning among its students and in society generally; and

(v) engages with its community in ways that enhance the social,
economic and cultural life of the community; and

(vi) is committed to academic freedom, which includes the questioning by staff and students of current knowledge and the proposal of new ideas; and

(vii) is free to regulate the subject-matter and content of its courses including determining what those courses are and the assessment processes for those courses.

(3) Page 4 (after line 16), at the end of Division 2, add:

2-5 Promoting the objects of the Act

A person or body exercising any power or function under this Act shall do so in a manner which promotes the objects of this Act.

This is the Democrats’ attempt to amend the objects of the act to essentially do the same thing Senator Carr’s amendment sought to do—that is, to enshrine the principles of what constitutes a university in the objects of the act. The second amendment relates to promoting the objects of the act. For all the reasons I outlined previously, I commend the amendment to the Senate.

Question negatived.

Senator NETTLE (New South Wales)
(11.53 a.m.)—by leave—I move Australian Greens amendments (1) and (2) on sheet 3202:

(1) Clause 2-1, page 4 (line 16) at the end of the clause, add:

; and (d) in relation to universities, to carry out the objects in paragraphs (a) to (c) recognising that each university is an independent and autonomous institution that has its own objects established by statute and its own distinct history and mission and is an institution which:

(i) governs its own affairs, including the composition and functions of its governing bodies and its workplace and other relations with its staff, within the statutory framework under which it is established or regulated;

(ii) is a centre of free inquiry which advances knowledge through teaching and scholarly research promoted at the highest standards;

(iii) provides degree and post-graduate education to serve the needs of the professions and to provide highly skilled graduates able to serve the needs of society;

(iv) promotes the importance of learning among its students and in society generally;

(v) engages with its community in ways that enhance the social, economic and cultural life of the community;

(vi) is committed to academic freedom, which includes promoting the questioning by its staff and students of received wisdom and the putting forward by those staff and students of new ideas and controversial or unpopular opinions;

(vii) is free to engage in research as are its staff and students;

(viii) is free to regulate the subject-matter and content of its courses including determining what those courses are and the assessment processes for those courses.

(2) Page 4 (after line 16), at the end of Division 2, add:

2-5 Promoting the objects of this Act

A person or body exercising any power or function under this Act shall do so in a manner which promotes the objects of this Act.

Maybe we will be third time lucky in having a go at setting out the role that public universities should play as independent and
autonomous institutions. We have had the debate about why universities should be separated out and the objects of what universities are trying to achieve in our higher education system stipulated in the fundamental and the principal act. I commend these amendments to the Senate.

Senator STOTT DESPOJA (South Australia) (11.54 a.m.)—The Democrats will be supporting these amendments.

Question negatived.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.54 a.m.)—by leave—I move government amendments (5) and (6):


(6) Clause 16-15, page 11, omit “Northern Territory University”.

Senator CROSSIN (Northern Territory) (11.55 a.m.)—I will make a few comments about this very briefly because I understand the time issue that is before us. I do want to place on the record that this is a very significant moment in the history of the provision of higher education in the Northern Territory. The Northern Territory University has been renamed and rebadged as the Charles Darwin University. It is a significant step for the Northern Territory University. A new vice-chancellor has been appointed, Professor Helen Garnett. Just recently—last week in fact—a new chancellor, Mr Richard Ryan, and a new council were appointed to the university. I believe this will be a significant step towards putting the provision of higher education clearly on the map in the Top End and ensuring that there is an opportunity not only for Territorians but also for people in the north to obtain a first-class, quality education. This amendment omits the words ‘Northern Territory University’ and recognizes and inserts Charles Darwin University in a list of higher education universities and providers. It is certainly supported by the opposition.

Senator STOTT DESPOJA (South Australia) (11.56 a.m.)—The Democrats will be supporting the amendments.

Question agreed to.

Senator CARR (Victoria) (11.57 a.m.)—The opposition amendments relating to the Charles Darwin University are now redundant.

The TEMPORARY CHAIRMAN (Senator Watson) (11.57 a.m.)—We now move to the Australian Maritime College opposition amendment.

Senator CARR (Victoria) (11.57 a.m.)—I move opposition amendment (11) on sheet 3209:

(11) Clause 16-15, page 11, Table A providers, insert in alphabetical order “Australian Maritime College”.

The amendment makes the AMC a table A provider on the grounds that, for all intents and purposes, it operates in the same way as a university, despite having a narrow distribution of courses. It is established under its own act. As such, it deserves to be treated the same way as other public higher education institutions and should be accorded the same status.

I would expect the Tasmanian senators here will support this amendment. I also want to indicate to the Tasmanian senators—who are probably not hearing me at the moment—that the AMC should be treated the same way as the other institutions by this amendment. We have information this morning that the claims the AMC was to receive $23 million over five years are not accurate...
Information being provided to us is that they will only be receiving $15 million. That is $8 million less than the government has been claiming.

Question negatived.

Senator CARR (Victoria) (11.58 p.m.)—by leave—I move opposition amendments (8), (12), (61) and (84):

(8) Clause 16-10, page 10 (line 23), at the end of the clause, add:

; (c) a *Table C provider.

(12) Page 12 (after line 7), after clause 16-20, insert:

16-22 Table C providers

(1) The following are Table C providers:

<table>
<thead>
<tr>
<th>Item</th>
<th>Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Christian Heritage College</td>
</tr>
<tr>
<td>2</td>
<td>Tabor College (Adelaide)</td>
</tr>
</tbody>
</table>

(2) However, a body is not a Table C provider if its approval as a higher education provider is revoked or suspended.

(61) Clause 104-10, page 95 (line 31), after “study”, insert “at a *Table C provider”.

(84) Schedule 1, clause 1, page 207 (after line 7), after the definition of Table B provider, insert:

Table C provider means a body listed in Table C in section 16-22.

This is a series of amendments to provide a much more robust policy framework to differentiate between types of higher education institutions. In conjunction with those which seek to remove ministerial discretion to grant and revoke the status of higher education providers, these amendments create a clear and transparent framework in which the entire sector can understand what each institution is entitled to receive. This framework recognises the different and unique status of universities as autonomous institutions by creating a distinction between the requirements placed on them relative to other non self-accrediting providers.

The framework begins with table A institutions, which are autonomous, self-accrediting institutions able to confer higher education awards under their own statute. These institutions have access to a full range of funding and, in recognition of their special status as autonomous institutions, will be required to comply with less interventionist scrutiny for the quality regime. Table B institutions are those which have access to a more limited range of public funding. Those institutions will have extra funding for national priority places established by clause 30-20 of the bill, and research and research training funding. Finally, there is funding for table C institutions, which are institutions which currently have access only to Post-graduate Education Loan Scheme, PELS, funding. That is to be replaced by the new loan scheme, whatever it is called. I am told the government is moving the goalposts on this matter as well. The new loan scheme, whatever its name is, would be provided for table C institutions. Finally, schedule 2 creates a similar list of bodies able to access funding under items 9, 10 and 11 of clause 41-10 of the bill.

The framework therefore maintains the status quo in its treatment of all institutions. I want to repeat that: this proposal maintains the status quo in its treatment of all funding institutions. It also maintains the important principle that the parliament, and not the minister, should determine which institutions are eligible to access public funding and subsidies. By creating a framework based on tables A, B and C and schedule 2, funding is confined to those institutions and body corporates explicitly named in the bill. This ensures that the parliament retains control over which institutions have access to funding. Access to public funds will also require a legislative change. It is an appropriate struc-
ture for this important area of public policy where the addition or deletion of institutions is the exception rather than the rule and therefore it is not an arduous requirement to amend the relevant act on these relatively infrequent occasions. This is a security measure. It ensures accountability and transparency and it limits the capacity for ministers to pork-barrel when it comes to the expenditure of public funds for higher education purposes.

Senator HARRIS (Queensland) (12.02 p.m.)—I have a question for Senator Carr. Can he advise me where Avondale sits in the opposition’s list?

Senator CARR (Victoria) (12.03 p.m.)—Avondale fits within the transitional bill. It is on page 16 of the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003, at line 17: ‘Allocation of Commonwealth Grants Scheme funding to Avondale College’. That is actually detailed in the current legislation.

Senator NETTLE (New South Wales) (12.03 p.m.)—The Australian Greens will be supporting many opposition amendments to the bill, but we will not be supporting these four amendments. I recognise that Senator Carr’s contribution aims to maintain the status quo in terms of those organisations that currently have access to public funding schemes. In this instance, we are talking about the previously labelled ‘PELS’, the Postgraduate Education Loan Scheme. In the chamber earlier—I think it might have been last year or earlier this year—we had the debate about whether we should be extending this public subsidy to particular private providers. Table C, which Senator Carr is seeking to insert into this legislation, allows two institutions, the Christian Heritage College and Tabor College, which were extended PELS in previous debates in this chamber, to have further access to public funding schemes. We recognise that that is maintaining the status quo, but the Greens are not happy with the status quo in terms of those private providers having access to public funding. For that reason, we will not be supporting these four amendments. That is certainly not any indication of any agreement we have made in relation to opposition amendments, because there are many opposition amendments that we will be supporting. Rather, we are not of a mind to support these particular four amendments being put up by the opposition because we believe in the public institutions having access to public funding rather than extending it to private providers.

Senator STOTT DESPOJA (South Australia) (12.05 p.m.)—The Australian Democrats will not be supporting the opposition amendments either. Our views are on record and, as Senator Nettle said, we have had this debate in relation to PELS in the chamber. It seems like it was only yesterday, but I suspect that she is right and it was last year. Clearly public funding and private funding are issues that deserve greater debate in this place, but perhaps not today. It is with regret, Senator Carr, that the Democrats will not be supporting you on this occasion.

Question negatived.

Senator STOTT DESPOJA (South Australia) (12.06 p.m.)—The Democrats oppose clauses 16-40, 16-45 and 16-50 in the following terms:

(9) Clause 16-40, page 15 (lines 1 to 7), TO BE OPPOSED.

(10) Clause 16-45, page 15 (lines 8 to 16), TO BE OPPOSED.

(11) Clause 16-50, page 15 (line 17) to page 16 (line 9), TO BE OPPOSED.

As I have indicated, the Democrats do not believe that the minister should have the
power to approve new bodies to the table A or table B list of providers. We believe that, if that approval is to be granted, it must be through a requirement of the act. That level of ministerial discretion is something about which we are concerned. The appropriation that has been made for this bill was determined for the providers listed in table A and table B, and no more. If the minister wishes to expand the allocation of places, that should take place outside the funding context of this piece of legislation. Those amendments relate to that issue. I commend them to the Senate.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that clauses 16-40, 16-45 and 16-50 stand as printed.

Question agreed to.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.07 p.m.)—by leave—I move government amendments (7) and (26):

(7) Page 16 (after line 9), at the end of Subdivision 16-C, add:

16-55 Disallowance of approval

(1) A notice of approval under paragraph 16-50(1)(b) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(2) A decision of the Minister to revoke the approval of a higher education provider takes effect at the later of the following times:

(a) on the day immediately after the last day on which a resolution referred to in subsection 48(4) of the Acts Interpretation Act 1901 disallowing the notice could be passed;

(b) the day specified in the notice of revocation under subsection 22-20(3) as the day on which the revocation takes effect.

Question agreed to.

Senator CARR (Victoria) (12.08 p.m.)—The opposition opposes subdivision 16-C and division 22 in the following terms:

(13) Subdivision 16-C, page 12 (line 8) to page 16 (line 9) TO BE OPPOSED.

(25) Division 22, page 27 (line 2) to page 32 (line 7) TO BE OPPOSED.

This is basically a provision relating to the cessation of the approval of providers. It is about removing ministerial discretion. We take the view that the approval process for institutions should be open and transparent and that the minister’s capacity to remove or revoke the approval of a higher education institution is something that should not be done behind closed doors. Our amendments are essentially designed to remove the provision relating to the power of the minister to undertake that action. We believe that any institution that receives Commonwealth funding or financial assistance, including access to financial assistance for students, should get that assistance as a result of a decision of parliament. That process should be open to public review so that people actually know how decisions are made rather than decisions being made as a result of political arrangements made privately.
Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.09 p.m.)—I would like to make a couple of points—although not directly on these amendments. I think everyone is grateful for people not wasting the chamber’s time by repeating arguments. That is appreciated by everybody but I think it would help the debate if we could keep a pretty calm air about things. I refer, for example, to the debate we had about the objects of the act. If you listened to some of the senators opposite you might have believed that there were no objects in the act and that nobody cared anything about higher education. Fair enough: some people have one view; some have another. But let us not get up and pretend—I am not looking at you particularly, Senator Carr, you just happen to be directly opposite me, facing my desk—that other people do not have a view and that things are not in the bill when they are. Let us not forget, for example, the government’s commitment to provide an additional $23 million to the Australian Maritime College and to Batchelor College over the period 2004-08. We certainly do not want to extend this debate any more than is necessary. It is perfectly reasonable for everyone to put their different views but not to suggest things with respect to the act which are simply not true.

Senator CARR (Victoria) (12.11 p.m.)—The minister’s intervention is interesting in the context that she has sought to make assertions about the opposition. We made it very clear that there were no objects in the act and that nobody cared anything about higher education. Fair enough: some people have one view; some have another. But let us not get up and pretend—I am not looking at you particularly, Senator Carr, you just happen to be directly opposite me, facing my desk—that other people do not have a view and that things are not in the bill when they are. Let us not forget, for example, the government’s commitment to provide an additional $23 million to the Australian Maritime College and to Batchelor College over the period 2004-08. We certainly do not want to extend this debate any more than is necessary. It is perfectly reasonable for everyone to put their different views but not to suggest things with respect to the act which are simply not true.

Senator STOTT DESPOJA (South Australia) (12.12 p.m.)—Before Minister Vanstone spoke I was going to indicate the Australian Democrats’ support for the amendments outlined by Senator Carr on behalf of the opposition. I will continue to indicate where the Democrats’ position is on most amendments so that we can avoid divisions. I am very happy to put on record that there is an objects clause in this bill. It is a deficient clause, and that is why we sought to improve it. I am quite happy, at any stage, to put on record or read out the objects of this bill. Unfortunately, they do not contain some of those key principles of democracy, the pursuit of free thought and some of the other words and issues to which I referred earlier. The Democrats, the Labor Party and the Greens—three times unlucky—were seeking to enhance the very basic objects of the act and make them a little more enlightened and democratic. That was the intention. The intention was not to suggest that it was a bill that was devoid of objects; just that it was devoid of meaningful objects.

Senator CROSSIN (Northern Territory) (12.14 p.m.)—Minister, I rise to ask you a
number of questions. I know that this is covered in opposition amendment (50): in relation to Batchelor College in the Northern Territory, you mentioned the provision of $23 million to be divided between Batchelor College in the Northern Territory and the Australian Maritime College. I would like you to tell me the exact amount that Batchelor College will receive out of that amount of money, how it has been calculated and what difference there is between that and the current money they get under the anomalous funding.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.14 p.m.)—Senator, the advisers indicate to me that they will be able to get you that information.

Senator NETTLE (New South Wales) (12.15 p.m.)—I indicate that the Australian Greens will be supporting these amendments put up by the opposition, because we also agree that where the minister is making decisions about private providers having access to public funding that should be an issue that we are able to debate in here. We are not always going to have the same view as the opposition—Christian Heritage College and Tabor College are examples of that. But, because these are pertinent issues about the expenditure of public funds in our higher education sector, we think it is appropriate that that discussion and public debate happens in the parliament, where the public can hear and understand the arguments and be involved, rather than the expenditure simply being determined by the minister. For that reason we will be supporting these amendments put up by the opposition.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that subdivision 16-C and division 22 stand as printed.

Question agreed to.

Senator CARR (Victoria) (12.15 p.m.)—I move opposition amendment (14) on sheet 3209:

(14) Clause 19-5, page 17 (after line 20), at the end of the clause, add:

(2) For the purposes of this section, financial viability is to be assessed against criteria including but not limited to:

(a) safety margins;
(b) borrowings;
(c) cash holdings and investments;
(d) net assets;
(e) ratio of current assets to current liabilities;
(f) trends in the above.

This amendment is to do with the question of financial viability. It seeks to define what financial viability is. I think it is a bit rough to say to higher education institutions, ‘We are going to assess you on the question of financial viability,’ and not define in legislation what you actually mean by those terms. We have listed six items to provide criteria by which one can assess financial viability. Those items are safety margins, borrowings, cash holdings and investments, net assets, the ratio of current assets to current liabilities and trends in the above factors—a perfectly reasonable, straightforward set of criteria for measurement of financial viability. I would be fascinated to hear the arguments for why this should be opposed.

Senator STOTT DESPOJA (South Australia) (12.17 p.m.)—The Democrats support the amendment and presume that the majority of the chamber will too. If not, I would be curious to hear the rationale for voting against this as well.

Question negatived.
Senator CARR (Victoria) (12.18 p.m.)—I am curious about this. There are no arguments at all being advanced as to why this should be rejected. Is that the proposition we are being asked to accept here today—that there are none whatsoever?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.18 p.m.)—by leave—I move government amendments (8) and (9) on sheet PA234:

(8) Clause 19-10, page 18 (line 4), omit “4 months”, substitute “6 months”.

(9) Page 18 (after line 11), at the end of Subdivision 19-B, add:

19-12 Minister to have regard to financial information

In determining whether a higher education provider is financially viable, and likely to remain so, the Minister must have regard to any financial statement provided by the provider under section 19-10.

Question agreed to.

Senator CARR (Victoria) (12.19 p.m.)—I move opposition amendment (15) on sheet 3209:

(15) Clause 19-10, page 18 (lines 4 to 6), omit paragraph (2)(c), substitute (c) must be provided as soon as they are available but not later than 6 months after the end of the annual financial reporting period for which the statement was given.

This amendment seeks to make a detailed change to the government’s amendment extending the financial reporting time for universities. Again, it is trying to facilitate a transparent process for universities to protect them from the overweening power of the bureaucracy. I am sure there will be a strong argument put forward here that will tell me why this is wrong, and I look forward to hearing it.

Senator STOTT DESPOJA (South Australia) (12.19 p.m.)—Maybe I should slow it down, just to give people time to formulate those impressive arguments against what is a very basic, simple, sensible amendment. The Australian Democrats will support the opposition’s amendment in relation to the time period that is proposed for the provision of the report. We think it is a good amendment, but we are open to debate and discussion. I could be floored by the arguments.

Question negatived.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.20 p.m.)—by leave—I move government amendments (10) to (14) and (16) on sheet PA234:

(10) Clause 19-15, page 18 (after line 16), at the end of the clause, add:

(2) The Minister must not determine that a higher education provider meets an appropriate level of quality for an Australian higher education provider, unless the Minister is satisfied that:

(a) if the provider is not a Table A provider—the provider meets the requirements of sections 19-20 and 19-25; or

(b) if the provider is a Table A provider—the provider meets the requirements of section 19-27.

(11) Heading to clause 19-20, page 18 (line 17), omit ‘Provider’, substitute ‘Provider (other than Table A provider)’.

(12) Clause 19-20, page 18 (line 18), after “provider”, insert “(other than a Table A provider)”.

(13) Heading to clause 19-25, page 18 (line 28), omit the heading, substitute:
Clause 19-25, page 18 (line 29), after “provider”, insert “(other than a Table A provider)”: 

Clause 19-27, Quality assurance—Table A provider:

(1) A Table A provider must be audited by a quality auditing body at least once every 5 years.

(2) The provider must, in relation to each audit of the provider:

(a) either:

(i) before the start of the audit, reach agreement with the body on the time of, and the arrangements for, the audit; or

(ii) comply with the Minister’s determination under subsection (3); and

(b) in relation to each audit, comply with any requests, made in the course of the audit by the body conducting the audit, that are reasonable having regard to the provider’s circumstances.

(3) If the provider and the quality auditing body are unable to agree on matters referred to in subparagraph (2)(a)(i) in relation to an audit of the provider, the Minister may, after consulting with the provider, determine in writing the audit arrangements for the provider.

Question agreed to.

Senator CARR (Victoria) (12.20 p.m.)—by leave—I move opposition amendments (16) to (18) on sheet 3209:

(16) Clause 19-15, page 18 (line 15), omit “at an appropriate level of quality for an Australian higher education provider”, substitute “an external system of normative peer review”.

(17) Clause 19-25, page 19 (line 1) omit paragraph (1)(b), substitute:

(b) by expert peer assessment as agreed between the auditing body and the body being audited.

(18) Page 19 (after line 12), at the end of Subdivision 19-C, add:

19-26 Review of audits

(1) A higher education provider may request the Minister to conduct a review of an audit conducted in accordance with this Subdivision.

(2) A higher education provider may request the Minister to set aside a recommendation of an audit on the grounds that it is unreasonable.

(3) Where the Minister receives a request in accordance with subsections (1) and (2), the Minister must:

(a) consider and notify to the provider his decision in relation to the request within one month of the request being made;

(b) table in both houses of the Parliament a statement of reasons in relation to each decision made in accordance with this section within 15 sitting days of making the decision.

These amendments are on the issue of the review of quality audits. Since I do not think anyone is actually interested in any discussion on this matter, it would probably be a waste of everyone’s time if I even bothered to try to explain why it would be important to get the issue of the quality audits process explained. Frankly, it is quite clear to me that, as I said, part of this agreement with the government is that it does not matter. That is the issue here: it does not matter how sensible the amendment is, how reasonable the amendment is or how much you improve the legislation, the deal now is crystal clear. The deal is that you vote for the government amendments, no matter what they are, and you vote against the opposition amendments, no matter what they are. This is the level of rational debate we have in dealing with
higher education in Australia. Frankly, senators, I suggest to you that this is not an appropriate way to deal with one of the most important sectors in our society and some of the most important public institutions in this country. If the AVCC is party to this, they ought to be ashamed of themselves.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.22 p.m.)—I wish to say something for Senator Carr’s benefit, because I thought he was trying to give the impression, because no-one wished to comment on the opposition amendments in relation to quality, that the rest of us did not care about quality. He was here in the chamber a few minutes ago when we passed some government amendments in relation to quality; in other words, the matter has been dealt with in an appropriate way. If he missed that, bad luck. I am pleased to see that the opposition advisers find that so amusing. It really warms the cockles of my heart.

In relation to Senator Crossin’s question, I did say that we would be able to get that information and I have it. In relation to Batchelor College, the figure for 2005 is $2.038 million; 2006, $2.079 million; 2007, $2.120 million; 2008, $2.162 million, which comes to $8.39 million. They are just the budgetary years. It is expected to continue.

Senator CROSSIN (Northern Territory) (12.23 p.m.)—Minister, I intend to return to this when we deal with opposition amendment (50) but I did ask you to provide me with information as to whether there were changes in relation to the current transitional funding that this college currently gets. What amount per year in relation to transitional funding is this for Batchelor College or is this not transitional funding under the anomalous funding package but just transitional funding?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.24 p.m.)—The advice I have is that they do not need transitional funding because they have this funding.

Senator CROSSIN (Northern Territory) (12.24 p.m.)—So this is part of the anomalous funding package—is that correct? That is correct. So what happens after 2008?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.24 p.m.)—It continues on, as I indicated when I gave you the figures.

Senator STOTT DESPOJA (South Australia) (12.25 p.m.)—The Democrats will be supporting the opposition amendments in relation to quality provisions and the review of audits et cetera. We do so because we think that these amendments are actually superior to the government amendments. I am not sure if many people listening or, indeed, people in the chamber have contrasted or are aware of the government amendments. Perhaps, even if we are not getting explanations against or counterarguments to Democrat or, in this case, opposition amendments, the government would like to put on record its rationale for its amendments. I understand that there are time constraints but this debate is becoming an insult to higher education in that we are not even hearing rational arguments against what, in many cases, are, if not straightforward, very sensible amendments.

The Democrats support the review of audits provision and the other changes to quality that Senator Carr has put forward. I am at a loss as to why they are not being sup-
ported. Perhaps those people who have supported the government amendments in here would like to explain why the government amendments were superior, particularly the last batch, to the opposition amendments. Everyone was quite happy and ready to agree that the government had put forward some amendments in relation to quality. I am not sure, for example, why Senator Harris necessarily deemed that those government ones were better.

Senator MURPHY (Tasmania) (12.26 p.m.)—Firstly, with regard to Batchelor College—I know the minister has said the funding continues—I would like to see something that is stronger than the minister’s words in this chamber. I do not want to reflect on you, Minister, but I think it is appropriate that maybe there is something in writing to give effect to this commitment, because it is important. In respect of the debate, I would also like to hear some argument from the government, even if it is only occasionally, as to why some of these matters ought not to be supported by me or indeed by other people. I would hope that the minister does provide us with some argument because it is—despite the fact that I may have almost agreed to the government’s program—the government’s responsibility to argue its case. So I would be interested in hearing some more argument from the government. I know we do not want to waste time but I am sure Senator Carr and Senator Stott Despoja will not waste time if the minister is providing reasoned argument. We should have some reasoned argument and I agree with them to that extent. Minister, I hope you take note of that, and, as I have said, I would like to see something in respect of Batchelor College in writing.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.28 p.m.)—As I pointed out to Senator Carr, we have already dealt with the issue of quality, so you would not expect much more to be said. But I can say at least this: what we have done is to effectively link the requirement that an institution be at an appropriate level of quality to the provisions of the legislation by which that is assessed. That is what the government has done. The government believes that the Labor amendment suggests a new process of peer review, which is far more prescriptive than the government amendment, and would create a new level of bureaucracy that is simply unnecessary. We believe that we have achieved the same outcome of quality requirements without having more prescription and more bureaucracy in the universities. In relation to Senator Murphy’s request to have something in writing, I am advised that is not a problem.

Senator CARR (Victoria) (12.29 p.m.)—I appreciate that the minister has actually given us some explanation, because it does at least allow us to identify that, like so much of this bill, the government’s position is predicated on fundamental errors. It has been sloppy in its draftsmanship, it has been shoddy in much of the work it has done in regard to the preparation of this bill and it has a vagueness with regard to what it is actually proposing. There are no clear definitions—and I have already discussed that, for instance, with regard to the issue of financial viability. The problem with that is that it exposes our public institutions and makes them vulnerable to misuse of power by either public servants or the executive. As a consequence, there is a need to be more prescriptive, there is a need to be clearer and there is a need to actually protect rights, because the government’s proposals do not do those things. The government does not really assist us by providing these sorts of vague statements that could mean anything to anybody.

On the other hand, the proposals I have advanced today do not lead to higher levels
of bureaucracy. They provide greater protections for institutions and greater protections for the people who will be required under this legislation to effectively become policemen for the Commonwealth in the administration of public funds. I want to suggest that that leaves our public university administrators in an extremely vulnerable position, and therefore they are entitled to have greater transparency in accountability in the way in which the administration of Commonwealth programs is undertaken.

Senator HARRADINE (Tasmania) (12.31 p.m.)—I would like to support what Senator Murphy has said, but I will go one step further. The government might feel that arguments have been advanced and provided to us for not supporting the certain proposals that are coming from the opposition, the Democrats and the Greens. That is fine, insofar as we are concerned, to have some arguments in writing, but in my view they really should be placed on the record during this particular debate. I appeal, through you, Madam Temporary Chair, to the minister to ensure that those arguments are in fact placed on the record.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.32 p.m.)—I thank Senator Harradine. What I have been trying to do—certainly not with respect to you, Senator Harradine, but with respect to some—is not to give senators the opportunity to have an unnecessary inflamed debate that takes up time that we need not take up. Therefore, I have been trying to assist by keeping out of the debate, because I can occasionally put things forcefully and that might aggravate things. I am trying not to do that, but to bring peace, light, freedom and everything else to this debate. I understand what you are saying, Senator Harradine, and I will try to find the balance.

Question negatived.

Senator STOTT DESPOJA (South Australia) (12.33 p.m.)—I seek leave not only to move Democrat amendments (12) and (13) together but also Democrat amendments (14), (15), (16), (17), (18), (19) and (20).

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.34 p.m.)—Senator Stott Despoja, I think I have given you a Christmas present only once—when we had a very long sitting and I gave every senator a Kit Kat to have a nice ‘break’. I think I will break the drought and give you another Kit Kat. Yes, of course we will give you leave.

Leave granted.

Senator STOTT DESPOJA (South Australia) (12.34 p.m.)—I am speechless. I move Democrat amendments (12), (13), (14), (15), (16), (17), (18), (19) and (20) on sheet 3189:

(12) Clause 19-20, page 18 (line 21), at the end of paragraph (a), add “at reasonable intervals but not more than once in 2 years and at least once every 5 years”.

(13) Clause 19-20, page 18 (lines 25 to 27), omit paragraph (c).

(14) Clause 19-25, page 19 (lines 8 and 9), omit paragraph 2(c), substitute:

(c) pay to the auditing body the agreed amount for such an audit.

(15) Clause 19-40, page 20 (after line 13), at the end of subclause (2), add “The Minister must report to Parliament on *higher education providers exempt from complying with the tuition assurance requirements in subsection 17-25(2)”.

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(16) Clause 19-45, page 21 (line 10), after “publish,”, insert “, provide free of charge on request.”.

(17) Clause 19-45, page 21 (line 14), after “publish,”, insert “and provide free of charge on request.”.

(18) Clause 19-50, page 21 (line 17), after “provider”, insert “, other than a Table A provider.”.

(19) Clause 19-55, page 22 (line 2), after “provider”, insert “, other than a Table A provider.”.

(20) Clause 19-70, page 23 (line 11), after “requirements”, insert “, incidental to the reporting requirements.”.

I will run very quickly through those amendments just to see if those Kit Kat stakes improve. We believe Democrats amendments (12) and (13) place sensible boundaries and close the loophole that we believe has been left open by the government in its drafting. If we do not have this particular minimum, we could have universities being audited twice a year. We also believe the five-year part of the clause is in line with the AUQA responsibilities. They conduct quality audits of self-accrediting higher education institutions and state and territory higher education accreditation authorities on a five-year cycle.

With regard to amendment (13), we believe the requirement currently in amendments (19) and (20) is unnecessarily intrusive for listed providers who are accountable through their establishing acts, compliance and with annual profile discussions as well as those AUQA audits and the state and territory Commonwealth acts to which I have referred previously. Amendment (14) places sensible boundaries and closes the loophole that we believe has been left open where auditors, for example, could charge excessive amounts. We believe that if an agreement on the price of an audit is reached then this removes some potential problems.

Amendment (15) is aimed at keeping the minister accountable by the minister reporting his actions under this section in parliament. Again, this is an accountability provision, but one that relates to the issue of ministerial discretion—something that is rampant throughout the bill as it stands. Amendment (16) relates to grievance procedures, to publishing or making the information publicly available. You can put it on a web site or have a copy of it in the institutions where the students are. We believe a document as important as the grievance procedures should be easily accessible and available free of charge in hard copy form if required. It is a simple amendment.

With regard to amendments (18) and (19), a provider already has its own review provisions. The Democrats think that clauses 19-20 and 19-55 also threaten the autonomy of institutions—that is, they are far too intrusive—and it could be argued that they are a duplication of current requirements, something I am sure Senator Harris would be concerned about, and therefore unnecessary.

The final amendment standing in my name on behalf of the Democrats is amendment (20) in relation to general information or a statement of requirements. Again, this is an attempt by the Democrats to close the loophole that we believe was left open as a consequence of the government’s drafting, whereby the minister could place any requirements at all on providing information to the minister. These amendments all go to the heart of availability of information, ministerial discretion and intrusion into institutional autonomy, so I have moved them en bloc.

Senator CARR (Victoria) (12.38 p.m.)—For the purposes of the record we do not support amendments (18) and (19), but we support all the others.
The TEMPORARY CHAIRMAN
(Senator McLucas)—We will put the question on those amendments separately.

Senator NETTLE (New South Wales) (12.38 p.m.)—I rise to indicate that the Greens will be supporting this series of amendments proposed by the Democrats. We think that they are important amendments that improve some of the parts of legislation we are dealing with, particularly Democrat amendment (14), which suggests that the universities pay auditing bodies the agreed amount for such audit. It seems to be an extremely reasonable amendment that has been proposed by the Democrats.

The issue of providing information free of charge on request is extremely important. So often, for students to be able access particular information at universities, they have to pay for additional material in their lectures and for course notes. This is another way of increasing fees for students and bringing in these sorts of small administrative charges for students to have access to information about their course, about where they are up to or about the university. We will be supporting these amendments.

Senator STOTT DESPOJA (South Australia) (12.39 p.m.)—Could I have an indication of how individual senators or parties are voting? I will not divide on anything but I would like a clear indication, if possible.

Senator MURPHY (Tasmania) (12.40 p.m.)—Although we have a very short period of time, can I request that the minister—although she has addressed some amendments—provide some argument with respect to these amendments. Insofar as the amendments are concerned, on the basis of the written explanation I have we will not be supporting the Democrat amendments, but I think it is appropriate that the minister say something.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (12.40 p.m.)—In relation to the Democrat amendments, as I understand the argument that Senator Stott Despoja has put—and I thank her for her brevity—the amendments we have moved basically interfere with autonomy and are too intrusive. We can all make our assessments about how autonomous things ought to be and how intrusive they ought to be but it needs to be understood that the reason the government is supporting its amendments and not the others is that, on these issues, we have had very, very extensive consultation with the vice-chancellors and the sector more broadly, and these amendments are agreed to.

Other people can come in here and say that they do not agree, and they are entitled to that—it is a free debate—but it is the government’s job when it has put forward a bill and moving amendments to consult with the sector, to make sure that the sector understands and to find out whether it agrees or disagrees. As senators will know, I have moved amendments in relation to this matter when the sector has not agreed and I have made it very clear. I am not arguing the case that the government always has to do what a particular sector wants, but I am saying that the sector is happy with these amendments. The Senate needs to ask itself whether the sector is happy. If the sector is happy and a properly elected government is happy, then, with respect, I think Senator Stott Despoja needs to put a case as to why a properly elected government and the sector are wrong.

If we were talking about an issue where the government was arguing a case where it had not consulted and did not have the views of the vice-chancellors or of people in the
sector, I think it would be perfectly rational to say, ‘You have to argue your case.’ But, with respect, Senator Stott Despoja, you have a view and you are entitled to it. As I have said on plenty of occasions, the voice of dissent is the bell of freedom. But what you are not entitled to do is to assume that your view is necessarily better than that of a properly elected government—and I do not say that to mean that you should therefore accept the government’s view. But when the government has consulted with and got agreement from the sector, I think you are the one who has to put your case.

Progress reported.

BUSINESS

Days and Hours of Meeting

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.45 p.m.)—by leave—I move:

That, on Thursday, 4 December 2003:

(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to midnight, and Friday, 5 December 2003, 9 am to adjournment;

(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with;

(c) the routine of business from not later than 4.30 pm shall be government business only;

(d) divisions may take place after 6 pm;

(e) the Kyoto Protocol Ratification Bill 2003 [No. 2] be considered for not more than 30 minutes immediately after the conclusion of consideration of government business order of the day no. 2 (ASIO Legislation Amendment Bill 2003);

(f) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below:


ASIO Legislation Amendment Bill 2003

Financial Services Reform Amendment Bill 2003

Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003

Family Law Amendment Bill 2003;

and any messages from the House of Representatives in relation to:

Trade Practices Legislation Amendment Bill 2003

Taxation Laws Amendment Bill (No. 5) 2003

Defence Legislation Amendment Bill 2003

Legislative Instruments Bill 2003.

The outline of the motion is that the Senate will sit today and tonight to consider ostensibly five bills, the one that we have just been considering and four others that have been the subject of an agreement across all parties and Independents—for which I thank them—and some messages which are listed in the motion. We will sit until midnight tonight or thereabouts. We will have a meeting of leaders and whips, or at least a chat around the chamber, later this evening and see what progress we have made. If it is clear that we are able to finish the program tonight, we would seek a consensus between the leaders and the whips as to whether we continue and try to finish tonight. If it is clear that we are not going to, the motion allows us to resume at 9 o’clock in the morning, on Friday. Clearly, the intention of the government is to sit and get those bills passed at a reasonable hour tomorrow, and I think that is highly achievable.

Question agreed to.
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) 12.46 p.m.)—I move:

That, after consideration of the government business order of the day relating to the Designs Bill 2003 and a related bill, the Senate consider messages from the House of Representatives in relation to the following bills till not later than 2 pm:

Taxation Laws Amendment Bill (No. 5) 2003
Defence Legislation Amendment Bill 2003
Legislative Instruments Bill 2003

Question agreed to.

ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) AMENDMENT BILL 2003

Second Reading

Debate resumed from 28 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.47 p.m.)—The Aboriginal Land Grant (Jervis Bay Territory) Amendment Bill 2003 will make three changes in the Aboriginal Land Grant (Jervis Bay Territory) Act 1986. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

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

Second Reading

Debate resumed from 28 November, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.48 p.m.)—This is not a controversial bill that is before us. The Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002 is designed to ensure that state laws do not limit in any way the ability of a local councillor to stand for federal parliament. The reason this matter is being dealt with is that an amendment to the Queensland Local Government Act 1993 purported to declare vacant the office of local councillors at the point of their nomination as a candidate in a state or federal election. Following a challenge to this provision, the Queensland Court of Appeal ruled that the provision was beyond the legislative competence of the Queensland parliament and was unconstitutional insofar as it dealt with nomination for federal parliament.

The Commonwealth bill amends the Commonwealth Electoral Act and provides that states or territories cannot limit the ability of local councillors to stand for federal parliament. There is good sense in this as only the Commonwealth should have the authority to legislate on the qualifications for election to the Commonwealth parliament.

Over the past day or so the opposition has had an opportunity to look at some amendments that have been provided by the Australian Democrats. No doubt Democrat senators—at least Senator Murray—will be addressing these proposals. I will try to summarise them, no doubt nowhere near as effectively as my colleagues from the Democrats will. Those amendments will expand the provisions for those protected against state legislation which limits their ability to nominate for federal parliament to cover state and territory MPs as well as members of local government. The amendments will allow
state MPs and members of local government to nominate for federal parliament but ensure that they do not have to resign before nominations close, as is currently the case, but rather within 24 hours of the declaration of the writs if they are elected. They will change the nomination form to ensure a person declares all political parties they are members of.

Clearly, the amendments being suggested by the Democrats are directly related to the bill, but they do add quite significantly to the impact on the Commonwealth Electoral Act and its nomination procedures. On the face of them, I want to say that the opposition believes that the Democrat amendments do have merit. But, because of their potential impact on well-established electoral procedures, it is our view that the amendments should be carefully reviewed before they are made law. I do not think that it would be betraying a confidence to note that a couple of potential constitutional issues have been raised by the government in discussions around these particular proposals. It is probably best, I would say, that the Democrat amendments be reviewed and any flaws ironed out before they are agreed to by the Senate.

In conclusion, the opposition believes that there is good sense in this bill, as only the Commonwealth should have the authority to legislate on the qualifications for election to the Commonwealth parliament. It is for that reason that the opposition will be supporting the bill. I think we have made clear our approach to the amendments that have been circulated on behalf of the Australian Democrats. I commend the opposition’s approach to the chamber.

Senator MURRAY (Western Australia) (12.53 p.m.)—I thank the Leader of the Opposition, who is also the shadow in this area of electoral matters, for both the nature and the tenor of his remarks. Since the amendments, which we will put on the voices, by arrangement, will go down—I am obviously aware that the government will not support them at this stage—I do hope that the government will encourage the Joint Standing Committee on Electoral Matters to examine these amendments because they are consistent with the intention of the bill—they just extend it to all politicians. Just to make it clear for the chair and those at the table, I will address my amendments in my speech in this second reading debate. I intend that the amendments will simply be put in the committee stage on the voices without me having to speak further to them, unless of course debate does ensue, in which case I will be obliged to speak. Otherwise I would expect these remarks to suffice and I will just formally move the amendments during the committee stage.

The Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002 seeks to ensure that state laws do not in any way limit the ability of a local government councillor to stand for federal parliament. That is a very good principle. The bill specifically amends section 327 of the Commonwealth Electoral Act 1918. It inserts new subsections providing:

A law of a State or Territory has no effect to the extent to which the law discriminates against a member of a local government body on the ground that ... the member has been, is, or is to be, nominated; or ... declared as a candidate in an election for the House of Representatives or the Senate.

In my opinion, the fewer restrictions we have on Australian citizens being able to stand for parliament the better. This bill is a good principle for that reason.

The aim of the bill is to prevent eligible members of a local government body from being disadvantaged or penalised under state or federal laws as a result of their decision to
stand as a candidate for election to either the House of Representatives or the Senate. This amendment follows the recent enactment of section 224A(b) of the Queensland Local Government Act 1993 which purported to declare vacant the office of a local councillor at the point of their nomination as a candidate in a federal election. Following a challenge to this provision, the Queensland Court of Appeal ruled in November 2001 that section 224A(b) was beyond the legislative competence of the Queensland parliament and it was unconstitutional insofar as it dealt with nomination for federal parliament which of course comes under the Australian Constitution, which is superior to any state constitution or parliament. This amendment to the Electoral Act reinforces the Commonwealth’s authority to legislate exhaustively, subject to the Australian Constitution, on qualifications for election to the Commonwealth parliament.

This bill is a measure of some significance because local government service is an important part of many political careers. Forty-three of the present members of the House and Senate, or 19 per cent of the 226 members of this parliament, have served in local government. We must encourage somebody progressing from a local council to state politics or to federal politics because the Australian people need to have a good choice of experienced candidates. There is no better forum to gain experience in face-to-face local and strongly felt political issues than local government. The old saying is that all politics is local, and local government is a solid training ground for people who wish to be involved in politics to pursue it, get a reputation and get a profile locally.

In fact the Deputy Leader of the Australian Democrats, Senator Lyn Allison, was a councillor on the Port Melbourne Council before entering the political fray. Similarly, Senator Brian Greig, who is present in the chamber today, was a councillor on the Vincent Town Council in Perth. Councillors provide very important services to local people. They have a valuable skill and knowledge base which would be a great addition to this parliament or to a state parliament. We have to do everything we can to encourage people with those skills to use them and to advance into federal or state politics if that is the way they want to go.

In saying that, however, this bill does not address the far larger issue concerning the eligibility of Australians to stand for the federal parliament. That, as all senators know, is section 44 of the Constitution, on which we are all in agreement but we can never find a government of any sort that can find the time to put the matter to the Australian people for correction. As the explanatory memorandum to the bill tells us:

The amendment to the Electoral Act should in no way be considered to remove or alter any existing Constitutional barriers to qualifying for standing for election. The onus is on all intending candidates and specifically, members of a local government body, to ensure that they Constitutionally qualify for election.

I note also that the Australian Electoral Commission warns prospective election candidates, and states:

... such positions as councillors and employees of local government, and members of the governing bodies and the employees of statutory authorities, could be at risk of disqualification, depending on their particular circumstances.

That potential disqualification, which is periodically tested at law, contained in section 44, and subsection (iv) particularly, of the Constitution is one of particular interest to the Senate and to the Democrats. Section 44(iv) states

Any person who—
... ... ...

(iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth ...

... ... ...

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Taking my own party in my own state at the 1998 election as an example, we had 14 lower house seats in Western Australia to contest, yet seven potential Democrats candidates were unable to stand due to their unwillingness to resign from their public sector positions.

The Australian Democrats have a long history of trying to rectify this part of the Constitution. In February 1980, 23 years ago, former Democrat senator Colin Mason moved a motion in this chamber which resulted in the inquiry I referred to earlier by the Standing Committee on Constitutional and Legal Affairs into the government’s order that public servants resign before nomination for election. We have sought to alter section 44(iv) four times through the Constitutional Alteration (Qualifications and Disqualifications of Members of the Parliament Bill 1985, the Constitutional Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1989, the Constitutional Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1992 and the Constitutional Alteration (Elector’s Initiative, Fixed Term Parliaments and Qualification of Members) Bill 2000. We have also covered this issue extensively in the recent reports of the Joint Standing Committee on Electoral Matters in 1996 and 1998. None of our bills have been allowed by the government of the day to be debated to the stage where they could go to the other house.

However, getting back to this bill—we very much support the bill on its merits, but we have put in some amendments designed to convey the same intention right across all levels of government. We sent our amendments on Monday afternoon to the government and to the opposition. The government came back to us with some issues whereby they tested our view of constitutional validity. We have made some changes to our original amendments to make the language clearer, but I must make it clear that our advice is that our amendments are constitutionally valid.

Our first amendment seeks to ensure that state and local representatives are treated in the same way while they are candidates for federal office. It would be inconsistent to allow one and not the other. This amendment seeks to amend both section 327 and section 164 to allow this. The second amendment deals with the potential for situations of conflict of interest that may arise when a person holds positions in state and federal government simultaneously. We believe that, while local councillors should be able to retain their positions while running as a candidate for federal office, they should cease their positions as soon as they become elected to federal office. There have been some issues about the constitutional validity, but we sought advice and we have divided the amendments accordingly. There are many differing views about what does and does not constitute an office for profit. I am sure that will be a matter for debate if these amendments show any sign of being accepted.

Suffice it to say, there have been numerous cases where members of parliament and senators have served both offices concurrently. I will only list a few. Arthur Fadden was a member of parliament for the Darling Downs from 1936 to 1958, he was Deputy Prime Minister from 1949 to 1958, he was Leader of the Country Party from 1941 to

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1958, and he concurrently held his position at the Townsville City Council. Alister McMullin was a New South Wales senator from 1951 to 1971 and President of the Senate from 1953 to 1971. He also held his position in the Upper Hunter Shire Council. Gordon Scholes was the MP for Corio from 1967 to 1993, Speaker of the House of Representatives in 1975 and he held his position with the Geelong City Council from 1965 to 1967. Robert Tickner was the MP for Hughes from 1984 to 1996, the Minister for Aboriginal and Torres Strait Islander Affairs from 1991 to 1996, and he held his position with the Sydney City Council from 1977 to 1984. Frankly, if that practice was ever valid, it is no longer valid. The work requirement of the Senate is now such that you simply cannot responsibly and reasonably hold both posts.

Our third amendment deals with the issue of compulsory declaration by all local government candidates of their membership of any political party. Our fourth amendment deals with compulsory disclosure by all local government candidates of their affiliations to any political party. The issue of disclosure is an important one. The Democrats advocate as an accountability measure that voters should always be aware of whether the people they are voting for are genuinely independent or are, in fact, members of a political party and therefore bound by the political policy of that party. Transparency in any political process must be open and above board.

We have to make it quite clear that local representatives are welcome at all levels of politics and should have the opportunity to campaign to get into the federal parliament without putting at risk their existing seat, as should state or territory representatives. We endorse the fullest participation of all Australians in our political process, and we would like to see the initiative of the government and the principle established in this bill by the government extended to all levels of government.

Senator BRANDIS (Queensland) (1.05 p.m.)—I welcome the Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002 and I rise to support the remarks I have just heard from Senator Murray and also from Senator Faulkner. I am pleased that this legislation will be supported. I wanted to make the point though that this is legislation that has as its origin a quite outrageous attempt by the Queensland state government—the Beattie Labor government—to restrict the franchise by introducing section 224A(b) into the Queensland Local Government Act some years ago. That act, as other speakers have said, was successfully challenged in the Queensland Court of Appeal by the Local Government Association of Queensland. I want to congratulate the Local Government Association on taking that initiative. I am also pleased to note that the Commonwealth intervened in support of its proceedings.

I said a moment ago that the effect of section 224A(b) would have been to restrict the franchise. There are two aspects to the franchise. One is the right to vote—and one commonly speaks of the franchise as the right to vote. But the other aspect of the franchise is the right to seek election—the right of all adult citizens to seek election to parliaments, state and federal. I have not researched the point, but I cannot think of a single occasion in the history of this parliament when there had been an attempt by a state parliament to restrict the franchise by rendering ineligible to stand for parliament a category of persons. Yet that is what the Beattie Labor government sought to do—to render ineligible to stand for this parliament
a category of persons who would otherwise have been perfectly entitled to exercise their democratic right.

What makes it so much worse—if it were not bad enough already, because it is an intrinsically wrong thing to do—is the category of persons against whom this disgraceful piece of legislation, section 224A(b) of the Queensland Local Government Act, was directed. It was directed against local councillors, people who wanted to serve in or were serving in shire or town councils in our state.

**Senator Conroy**—Do you understand the meaning of ‘noncontroversial’?

**Senator BRANDIS**—Of all the people in society you would think were worthy representatives in the Commonwealth parliament—this is not a party political point—you cannot imagine a more worthy group of people to seek to aspire to serve in the parliament than members of local authorities.

**Senator Faulkner**—Madam Acting Deputy President, I raise a point of order. If the opposition had realised that Senator Brandis had intended to make a speech like this during the period on our routine of business that is made available for noncontroversial legislation, the opposition would have insisted that this matter not be dealt with at this time. We have cooperated with the government and allowed it to be dealt with at this time. I would be surprised if this was not the attitude adopted by the Australian Democrats too. There have been discussions, I might say, around this chamber on a way of dealing with amendments to ensure that this matter could be dealt with in noncontroversial legislation. This is, at a minimum, a breach of understandings, if not a breach of the standing orders. I am very surprised that Senator Brandis, who I thought would have some political morals when it came to these matters of dealing with noncontroversial legislation, would understand that. It is possible that Senator Brandis is not aware of these sorts of arrangements. He is an inexperienced senator and he makes a lot of mistakes in the chamber. But this is another one, and I think we should do something about it, Minister.

**Senator BRANDIS**—On the point of order, Madam Acting Deputy President, the point of order amounts to this: that the speech is not germane to the legislation.

**Senator Faulkner**—That is not my point of order at all.

**Senator BRANDIS**—That is what it amounts to, Senator Faulkner. The legislation is uncontroversial. I have acknowledged that in my speech. I am not criticising either the legislation or the opposition’s attitude to the legislation, because it is common ground. The legislation is uncontroversial and nothing in my speech has sought to controversialise it.

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—There is no point of order. However, I request you, Senator Brandis, to confine your remarks to the issue and recognise the convention in this place around noncontroversial legislation.

**Senator BRANDIS**—Absolutely, Madam Acting Deputy President. When Senator Faulkner rose to his feet to take the point of order which you have ruled against, I was concluding. I want to conclude by making the point that, of all the people in society who would be worthy candidates to aspire to election to this parliament, you could not think of a more worthy group of people, who have already declared their willingness to stand and represent constituents in local government. It is the interests of those people that this legislation, which I am happy to say is supported by all sides of this chamber, is designed to protect. It is a shame that legislation was needed to protect the interests of
those people against the outrageous attempt to restrict the franchise by the Beattie Labor government.

Senator ABETZ (Tasmania—Special Minister of State) (1.11 p.m.)—I thank the Labor Party for their forbearance in relation to this situation. I thank honourable senators for their contribution to the debate on the Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002. This is an issue that affects all sides of politics. I think of the now Leader of the Labor Party, a former mayor of Liverpool, Mr Latham. I think of my colleagues Senator Paul Calvert and Senator Richard Colbeck from Tasmania, who had distinguished service—

Senator Conroy—Senator Conroy, councillor for Footscray.

Senator ABETZ—I have just been reminded of the wonderful service of the Deputy Leader of the Opposition, Senator Conroy.

Senator Faulkner—Apparently even Senator McGauran was elected as a councillor, which starts to put a hole in the theory.

Senator ABETZ—I understand that there has been a change of guard behind me in relation to whip service to Senator McGauran, who of course was also a very distinguished councillor on the Melbourne City Council. What it shows, with Senator Murray’s examples as well, is that there has been distinguished service at the local government level by people from the Democrats, from the Labor Party, from the Liberal Party and from the National Party. To put a restriction on those people from potentially pursuing their representative interests from local government to federal government is something that we as a government were concerned about, given certain events that have been outlined by Senator Brandis. As a result, to put it beyond doubt we have introduced this legislation. I thank the Senate for its support.

To assist in the committee stage, I will briefly deal with two matters raised by Senator Murray. I am happy to consider—I am not making a promise by this but am happy to consider—whether the issues raised by you should be referred by me to the Joint Standing Committee on Electoral Matters for further consideration. As I have indicated to you privately, but there is nothing to stop me saying it publicly, I think there are some constitutional issues. You have advised me that you believe that there are not those constitutional restrictions. Let us try and tease that out between ourselves to see whether there is such an issue.

In relation to whether people should declare membership of political parties at the local government level, as a former humble suburban solicitor who has no claim to great constitutional knowledge, I would have thought that, local government being a creature of and established by state government, it may well be an issue for state governments to legislate on as opposed to us as a federal parliament trying to foist our views. Indeed, that is why this legislation arose, when a state government tried to foist its views on who can be a representative in the federal parliament. We believe that is clearly our province, and the Queensland Court of Appeal were supportive of that view. We are now putting it beyond doubt with this legislation. At this stage at least I am minded to believe that any restriction on state government service and local government service, local government being a creature of state government, is really within the province of state governments and not of the federal parliament. Having said that, can I thank most, if not all, senators for their cooperation in
ensuring that this legislation goes through as expeditiously as possible.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia)

(1.16 p.m.)—by leave—I move:

(1) Schedule 1, item 1, page 3 (lines 5 to 17), omit the item, substitute:

1 At the end of section 327

Add:

(3) A law of a State or Territory has no effect to the extent to which the law discriminates against a member of:

(a) the Parliament of a State; or
(b) the Legislative Assembly of the Northern Territory of Australia; or
(c) the Legislative Assembly for the Australian Capital Territory; or
(d) a member of a local government body;

on the ground that:

(e) the member has been, is, or is to be, nominated; or
(f) the member has been, is, or is to be, declared;

as a candidate in an election for the House of Representatives or the Senate.

(4) In subsection (3):

candidate for the Senate or the House of Representatives, resign from any of the bodies listed in paragraphs (a) to (c) not more than 24 hours after the declaration of the writ for the relevant election.

164A Members of local governing bodies

A member of a local governing body established by or under a law of a State or Territory who, is nominated as a candidate for the Senate or the House of Representatives, must, if elected as a Senator or Member of the House of Representatives, resign from that local governing body not more than 24 hours after the declaration of the writ for the relevant election.

(3) Schedule 1, page 3 (before line 5), before item 1, insert:

1B At the end of subsection 170(1)

Add:

; and (d) declares the name of all political parties of which he or she is a member.

(4) Schedule 1, page 3 (before line 5), before item 1, insert:

1C After paragraph 176(1)(a)

Insert:

the name of all political parties of which the candidate is a member; and

I will not speak to the amendments. With the permission of the chamber, I ask that amendments (1) and (2) be put separately on the voices and that amendments (3) and (4) be put on the voices together.

The CHAIRMAN—There being no objection, I will follow that course. The ques-
tion is that amendment (1) on sheet 3240 moved by Senator Murray be agreed to.

Question negatived.

The CHAIRMAN—The question is that amendment (2) on sheet 3240 moved by Senator Murray be agreed to.

Question negatived.

The CHAIRMAN—The question is that amendments (3) and (4) on sheet 3240 moved by Senator Murray be agreed to.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (1.17 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

CUSTOMS LEGISLATION AMENDMENT BILL (No. 2) 2003

Second Reading

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

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (1.18 p.m.)—I have provided a copy of my prepared speech to the Chief Government Whip and, accordingly, I seek leave to have my remarks, on behalf of the opposition, on the Customs Legislation Amendment Bill (No. 2) 2003 incorporated in Hansard.

Leave granted.

The speech read as follows—

I rise to speak on the Customs Legislation Amendment Bill (No 2) 2003.

The Opposition supports this Bill, which makes largely technical amendments to Customs legislation and tidies up some earlier drafting.

These amendments flow from the Trade Modernisation legislation and the re-engineering of the systems being developed to implement it.

It must be noted though that the Government has circulated an amendment extending the statutory cut-off date for the completion of the Cargo Management Reengineering project from July 2004 to July 2005.

The purpose of this Bill is to amend the Customs Act 1901, the Customs Legislation Amendment Act (No. 1) 2002 and the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001 (the ITM Act) to:

• amend the circumstances in which outturn reports in respect of containers unloaded from a ship must be given so that they do not have to be given if there are no containers being unloaded;

• amend the time at which reports in respect of goods for export that are removed from a wharf or airport have to be provided to Customs so that they have to be reported before they are removed;

• remove provisions that may narrow the class of people who can communicate electronically with Customs;

• insert new record keeping and evidence provisions in respect of certain electronic communications to and from Customs;

• amend the false or misleading statement offence provisions so that people who cause such statements to be made will be guilty of the relevant offence;

• amend those same provisions to limit the circumstances in which an offence will not be committed because a person notifies Customs that the information in a communication was incorrect or inadequate and to require any duty owing to be paid;

• amend the record keeping requirements to ensure that those people who cause state-
ments to be made must keep records that verify those communications;
• correct a technical error which if left uncorrected would mean that an amendment would never commence;
• insert a provision which reinstates a person’s right to seek review of decisions relating to the old administrative penalty scheme by the Administrative Appeals Tribunal; and
• repeal and replace the transitional arrangements that will apply in respect of exports when the new electronic systems being developed by Customs commence.
• by amendment to the Bill as printed, extend the completion date of the CMR project by 12 months.

This is a relatively straightforward Bill, the only potential controversy arising from the amendment being the extension of the July 2004 timeline for the Cargo Management Re-engineering (CMR) project for one year, and the proposed changes to the offence of making a false and misleading statement to a Customs officer.

CMR
An overhaul of the way Customs manages the flow of imports and exports and communicates with its clients has been underway for several years.

A new computer system will be used, with progressive introduction commencing with express air freight and exports.

That will be followed by imports which will be a substantially greater undertaking.

All clients will be required to communicate direct with Customs electronically, not through the intermediary hub of Tradegate—nor in paper form.

This is an ambitious project and, like all large and complex systems which have grown up over the years, is probably overdue.

Certainly the investment is needed if Australia is going to keep pace with the complexity of freight movement in and out of the country—and there always comes a stage where it simply has to be done.

The decision by Customs was the right one, but as we have seen, the task has been much bigger and more difficult than was ever imagined.

In short, it has proven a monster, and the proposal to extend the time frame is the second time it has had to be done.

Industry of course is furious as their reliance on Customs’ systems is total.

Nothing moves into or out of this country without Customs’ approval, and Customs’ systems must be able to talk to everyone else’s.

And this is the difficulty. The interaction of company systems with Customs systems is so completely critical that everything must be done in lock step.

And yet what industry is finding is that despite the plans and the promises, reliability of the Customs’ own new systems is such that industry is becoming totally frustrated.

As we know from Senate Estimates there are over 50 software providers building systems which link directly with Customs in a completely paperless network.

And yet there are releases of code for testing which don’t work, patches—and then more releases.

Messages which under Tradegate might have taken a few minutes to transact, now take hours.

The Customs service has in fact admitted that due to the lack of documentation, they didn’t know enough about their legacy systems let alone the business being re-engineered.

This of course is proving to be a very expensive exercise.

In addition to that frustration of course, companies need to train their own staff on new systems, and that costs too. In fact $1.5 million has been invested so far.

Yet with the delays and postponements, companies understandably are reluctant to commit to unknown timelines.

For some the further extension of twelve months is a blessing—unless of course they have already invested and now find that considerably more will be needed.
But apart from the whole messy set of circumstances industry now finds itself in, there are many questions which need to be asked as to why this has all come about.

We also know that the cost of this project has now blown out from about $35 million to $145 million—and of course we cannot expect that will be the end of it.

The Minister in fact used the figure last Tuesday of $146 million—so it is already growing.

In the big wide world of systems redevelopment we all know that they never go according to timetable or budget—but of course there have to be limits.

We also know of stories where systems have simply been scrapped—at huge cost.

That we hope is not the case here, but all this does say something about the quality of management in government and the pressures that have been placed on departments embarking on such ambitious work.

In this case, as I have said, it is admirable that Customs took the decision, but thereafter one must be concerned with their ability to get on with the job.

Customs, like many other parts of the Commonwealth service has lost large numbers of experienced staff over the last ten years who took with them a wealth of corporate history and knowledge.

It is little wonder then that the detail of the business built up over 100 years has been difficult to discover and plot with accuracy.

As others have remarked, there are more people outside Customs who know more than those inside.

That is not simply an endemic issue across all portfolios where the presumption of modern managerialism is that staff are interchangeable.

I am reliably informed for example, that none of the Customs people controlling this project have any substantial background in Customs.

It is also about cutting staff in the core Customs business.

Those with the longevity and knowledge have gone.

Then of course there is the budget and we know that Customs have been funding this project from internal sources—without supplementation.

This of course has meant that Customs have had to rob Peter to pay Paul—with the result that other responsibilities are being abandoned. These savings are expected to be $60 million.

Now it is also admitted that this cannot continue—with a confession that new money will be sought this budget, and most likely from increased charges.

Industry naturally is irate, but of course, as we know, Custom’s attitude to industry is hardly one of listening or any great consultation.

Industry will pay, and pay more for this fiasco for many years to come.

Finally of course there is the overarching Government policy on outsourcing where it is clear that the arrangements between the major I/T companies involved here are also known to be an issue.

So is the management of those contracts—remembering here that in addition to EDS, the main Customs contractor, we now have Computer Associates and other members of that consortium—and IBMGSA.

We also know from Estimates in early November that these contracts have proven quite lucrative. Computer Associates for example, who won the initial contract to build the Integrated Cargo System (ICS) for $29.7 million, have enjoyed an extension to $45.1 million.

This is not to mention of course the admission that the product built is now out of warranty and the company is also enjoying a substantial maintenance deal while the system is being fixed.

The detail of contracts, management of those contracts, the adequacy of specification, and the capture of Customs in long term maintenance deals are all things worthy of close examination.

And industry who are mightily peeved at the way this project has been managed can be assured that we on this side will be doing just that.
Now we hear too that the export module, already postponed from December next to March, will slip again—presumably to a date to be advised.

We can only hope that this time next year when inevitably we will have before us another Customs legislation Amendment Bill, that another time extension is not part of it.

Communication of Information

Returning to the rest of the Bill, as I said at the outset, most of the provisions are technical. They flow from the need to ensure that under the new electronic systems to be introduced, provision of information is better regulated and that transitional arrangements are made for two systems to run in tandem during any switchover.

These are practical considerations and no doubt there will be more in due course.

I would just observe however, that Customs is clearly a highly regulated environment where the ACS seems to be engaged in a constant battle to accurately collect duty payable—and where there are some who equally try and evade it.

The provision of information is therefore vitally important, though I do detect from some in the industry a sense of overkill and a very strong arm.

As in all things there must be a balance, but I do say to industry, that the regulatory process is a democratic one. You can have your say—and I am happy to listen.

If these changes are considered unreasonable, industry should say so.

With respect to the accountability for information communicated to Customs, several provisions in the Customs Act make it an offence to ‘make a statement that is false or misleading in a material particular’ or to ‘omit a thing or a matter from a statement, without which it is false or misleading in a material particular’.

Once the new computer system is up and running, there will be new ways in which people will be able to electronically communicate with Customs. It is expected that there will be people who will offer to send communications to Customs (and receive communications) on behalf of other people who do not have the relevant computer software or hardware in order to communicate directly with Customs.

Where these people are engaged to send communications to Customs they will be the people who ‘make’ the relevant communications for the purposes of the provisions set out above.

In some circumstances they may be engaged by the person who is obliged to make the communication, but they may also be engaged by that person’s agent.

For example, in respect of an import declaration, the owner of goods may engage a Customs broker to make the declaration and the broker may then use a bureau to send the declaration to Customs.

With the advent of the new systems, the current ‘misleading statement’ provisions will no longer capture all the persons who may be liable for making a false or misleading statement.

Many of the amendments are needed to reflect the changes in practice that will arise out of the changes in technology that Customs is implementing and to make sure responsibility is sheeted home to the right person.

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

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

The second measure makes a similar amendment in relation to record retention obligations in the Customs Act.

- so that all persons involved in preparing or sending communications to Customs will have to keep records that verify the content of the communication
- and identify the source of the information included in the communication.

The penalties for these new offences will be:

- where duty is payable on particular goods an amount not exceeding the sum of $5,000 and twice the amount of the duty payable on the goods;
where the offence relates to diesel fuel rebate, an amount not exceeding the sum of $5,000 and twice the amount of the excess rebate claimed; or

• in any other case, an amount not exceeding 100 penalty units.

The Government argues that the offences of giving false or misleading information for inclusion in a statement to Customs are as serious as those of making the false or misleading statement to Customs and hence should be subject to the same penalties.

So much of this Bill is driven by the needs of the new systems.

This has been a major issue for Customs and their introduction does provide an opportunity to gain better control, and hopefully better productivity.

Like all regulatory areas of the Customs jurisdiction, this will need careful monitoring.

The Opposition supports this legislation.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.18 p.m.)—The Customs Legislation Amendment Bill (No. 2) 2003 contains a number of amendments to the Customs Act 1901 and other Customs legislation related to Customs’ international trade modernisation, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

DESIGNS BILL 2003

DESIGNS (CONSEQUENTIAL AMENDMENTS) BILL 2003

Second Reading

Debate resumed.

Senator RIDGEWAY (New South Wales) (1.19 p.m.)—The purpose of the Designs Bill 2003 is to repeal the Designs Act 1906. It obviously needs to be redrafted, given that it is almost 100 years old and has not been amended in that time. Essentially, this is about redrafting the act to provide a system of designs registration that includes a reduced period of registration, stricter eligibility and infringement tests, more streamlined registration processes and new enforcement procedures. The essential nature of what is protected under the Designs Act has remained unchanged, as I have mentioned, for a long period. There has been extensive community consultation and review of proposals for a new scheme over recent decades and the bill gives effect to the recommendations from the 1995 Australian Law Reform Commission report into the Designs Act.

While the Democrats agree that the bill in itself is non-controversial, it could be argued that an opportunity has been missed to amend the act to improve the level of protection afforded to Indigenous designs. It is in that context that I would like to make further remarks. The Australian Law Reform Commission in its 1995 report noted that traditional Aboriginal and Torres Strait Islander designs are a particular area of importance.

The question of protection of Indigenous intellectual property is an important one, and I am sure many people here would agree. When people think about Indigenous intellectual property, they usually think about artwork. Certainly, an effort needs to be made to ensure that Indigenous artists charged with the responsibility of representing their people’s dreaming are extended the
proper protection under intellectual property law.

Indigenous artwork, song and dance were showcased magnificently during the Olympics. It won Australia international acclaim for the unique beauty and spirituality of the oldest living culture in the world. And it is only right, I think, that Aboriginal and Torres Strait Islander people should now feel that their cultures will be afforded the respect, protection and recognition that they deserve. However, the protection of Indigenous intellectual property goes further than this. Indigenous culture and heritage also includes songs, stories, language, dance, artwork and traditional practices. It also includes inheritances from the past and their relationship to the land and water, such as human remains, the natural features of the landscape and biological knowledge.

As I mentioned during the debate on the Plant Breeder’s Rights Amendment Bill last year, there is growing pressure to access and exploit Indigenous knowledge and resources for commercial purposes, and that has serious implications for the future integrity of Indigenous cultures, particularly the ability of those cultures to survive the onslaught of global commercial pressures. We now find ourselves in a totally unacceptable situation where Indigenous traditional knowledge claims in this country remain unprotected and, to a significant extent, unenforceable. There is not any legal recognition of the collective and individual nature of Indigenous intellectual property, the ongoing permanent nature of the laws and customs, the often secret nature of how that information is held and the right of Indigenous people, through their custodians, to share in some of the benefits, despite the findings of the High Court in native title where it talks about recognition of the interwoven relationship between Indigenous property rights and cultural law and practice.

In the report Our culture: our future produced by Terri Janke, she made the point that one of the most important challenges in the issue of protecting Indigenous cultural heritage is the protection of Indigenous designs. The Designs Act, as it currently stands, poses the following challenges for Indigenous people: (1) there is limited duration of protection, (2) the cost for Indigenous people to be able to register their designs, (3) the difficulty in satisfying ‘original’ or ‘new’ requirements in the registration test and (4) authorship is applied to one or two people. The bills before us go some way towards addressing these issues, though fundamental conceptual differences remain such as the need to prove the ‘novelty’ or ‘distinctiveness’ of a design that is thousands of years old and owned communally by a group of people as opposed to one designer. In this sense, an important opportunity has been lost in the development and introduction of the bill and to consider these questions in terms of their application to Indigenous people.

The Democrats believe that the consideration of the broader question of the protection of Indigenous intellectual property needs to take into account Australia’s international obligations to recognise, protect and maintain Indigenous traditional knowledge, innovations and practices and the extent to which Australia’s existing laws fulfil these obligations. Where there are deficiencies in our current laws, the government must address the question of how best to address these deficiencies in order to fulfil our international obligations to protect the intellectual property, knowledge and practices of our Indigenous people.

While the Democrats view these issues as vitally important, we will not be holding up the passage of the bill on this basis. We understand that these amendments to the Designs Act are long overdue and, as the Australian Law Reform Commission report
noted, these issues do need to be addressed in the broader context of Indigenous intellectual property protection. However, we also feel that it is important that the point be noted. To that end, I move a second reading amendment on sheet 3252 in the name of the Democrats:

At the end of the motion, add:

“but the Senate:

(i) encourages the Government to note the comments of the Australian Law Reform Commission in regard to the need for protection of Indigenous designs;

(ii) encourages the Government to commit to the development and introduction of such a scheme of protection; and

(iii) calls on the Government to introduce already promised legislation relating to the protection of Indigenous intellectual property, in particular the issue of communal moral rights”.

Senator MARK BISHOP (Western Australia) (1.25 p.m.)—The opposition supports the amendment moved by the Australian Democrats.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.25 p.m.)—The government notes the comments made by the ALRC in relation to the protection of Indigenous designs. The government agrees with the ALRC that the special issues associated with Indigenous works cannot adequately be addressed through general designs law and notes that the ALRC did not make any recommendations on the protection of Indigenous designs. The protection of Indigenous culture and artworks is an issue that this government takes very seriously. Australia is taking an active part in discussions at an international level through participation in the World Intellectual Property Organisation’s intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore. In addition, as announced in May this year the government will introduce amendments to the Copyright Act to give effect to Indigenous communal moral rights. These rights will protect the integrity and sanctity of Indigenous culture, but the government will not be supporting the Democrat amendment.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TAXATION LAWS AMENDMENT BILL (No. 5) 2003

Consideration of House of Representatives Message

Consideration resumed from 3 December.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.28 p.m.)—I move:

That the committee does not insist on its amendment to which the House of Representatives has disagreed.

Senator CONROY (Victoria) (1.28 p.m.)—The opposition will not be insisting on the amendment.

Senator MURRAY (Western Australia) (1.28 p.m.)—Likewise, the Democrats will not be insisting on the amendment.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.29 p.m.)—I welcome the news that the opposition and the Democrats will not insist on the amendment made to this bill.

Question agreed to.
Resolution reported; report adopted.

DEFENCE LEGISLATION AMENDMENT BILL 2003

Consideration of House of Representatives

Message

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.30 p.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator CHRIS EVANS (Western Australia) (1.30 p.m.)—On behalf of the opposition, I indicate that we will not be insisting upon the amendments to the Defence Legislation Amendment Bill 2003. I indicated that in the earlier debate. We passed a range of amendments moved properly by the Democrats which sought to remove some discriminatory practices against gay and lesbian members of the ADF that prevent them from having equal access to housing loans. It is one of a number of discriminatory practices in Defence legislation, regulations and practices that discriminate against gay and lesbian ADF members. We thought this was a good opportunity to invite the government to adopt a much fairer and a much more principled and equal approach to these issues; I am disappointed that they have not. I think the ongoing discrimination against gay and lesbian members of the ADF cannot be accepted or tolerated, and the government really must start to come to terms with those issues.

Senator McGauran may laugh, but I am happy to provide him with information of very extreme discrimination against people who are legally entitled to be members of the ADF since we removed the ban on gay and lesbian members of the ADF. They are entitled to be treated equally with other members when it comes to issues such as housing, relocation allowances, treatment of partners et cetera. I made it very clear to the Senate chamber when we debated this the first time that Labor would not be insisting on these amendments, not because we do not have a commitment to the issues but because this was an omnibus bill which the government has taken a very long time to bring before the parliament.

The bill contains a range of measures which are generally supported across the parliament and it includes amendments which seek to deal with people wearing medals who are not entitled to, which has been a vexatious issue and a concern to the veterans community for a long time. The government has rightly sought to fix that. We gave a guarantee to the veterans community that this legislation would pass, if we could help it to pass, by the end of this year. I know the veterans community is very focused on this legislation being in place prior to the next Anzac Day celebrations, and certainly that has been a Labor commitment for some time. I indicated in the original debate that, while we would prefer the amendments to be carried, we would have to try to increase the pressure on the government to rethink its position. But on this occasion we will not insist because we think the other measures in the bill have to be carried.

We are conscious that if we insist upon these amendments today the bill will not pass and it will not be considered again before February or March next year and those other provisions would, therefore, not be enacted prior to the next Anzac Day and the commitments given to the veterans community by both the government and the opposition would not have been honoured. As I said, this bill has taken too long to appear in the first place; we were not prepared to let it be delayed any longer. I had a range of matters that I wanted to move on behalf of the Labor Party which went to military justice issues.
and a range of other things that I think would greatly improve Defence Force legislation but, because we realised the bill would only come in during the last few days of the parliament, we took a decision that we would not pursue those amendments. That was done because the government reaction would no doubt have prevented the passage of the bill.

I reiterate that Labor supports the amendments that were moved by the Democrats. We think they are an overdue reform in one small area of resolving discrimination against gay and lesbian members of the Defence Force, and we do not resile from that commitment. We will, if elected to government, seek to rectify those discriminations. But, as I indicated earlier, we will not be insisting on the amendments because of our commitment to pass the bill. If we did insist on those amendments on this occasion, the bill would not be carried in this session. For those reasons, Labor will not be insisting on the amendments.

Senator GREIG (Western Australia) (1.34 p.m.)—I too would like to speak briefly to the Defence Legislation Amendment Bill 2003. We Democrats will be insisting on the amendments. We believe they are an overdue reform in one small area of resolving discrimination against gay and lesbian members of the Defence Force, and we do not resile from that commitment. We will, if elected to government, seek to rectify those discriminations. But, as I indicated earlier, we will not be insisting on the amendments because of our commitment to pass the bill. If we did insist on those amendments on this occasion, the bill would not be carried in this session. For those reasons, Labor will not be insisting on the amendments.

Senator GREIG (Western Australia) (1.34 p.m.)—I too would like to speak briefly to the Defence Legislation Amendment Bill 2003. We Democrats will be insisting on the amendments. We believe they are important and should be sustained, and I would ask that, when procedures allow for it, a formal vote be taken on this later in the day. The response from the government in the House of Representatives is not remotely surprising; it was entirely anticipated, although I cannot help noticing that in its stated reasons for opposing the amendments in the other chamber it returned to the very same arguments that we heard in committee hearings which I spoke of when I spoke to the amendments. They were for the government to lean, once again, on the definitions in the Marriage Act 1961 and the Sex Discrimination Act 1984 for what constitutes marriage and a de facto relationship. The explanation—or excuse, as I would call it—from the other place is to argue that those are the definitions that stand and there is no proposal to change them and, therefore, they do not accept them.

I do not believe that such an argument would be advanced if we were dealing with other areas of discrimination such as race, disability, religious belief or political affiliation. I do not believe it would be fobbed off in such a nonsensical way. However, the position from Labor is genuinely disappointing. Senator Evans spoke strongly and there was some encouragement in what a future Labor government might try to achieve, but I cannot help noting again that the position advanced by Senator Evans today is precisely the opposite to that which was advanced during the superannuation co-contributions bill where, when it was suggested that we Democrats would not insist on same sex couple amendments to that bill, we were all but vilified by the opposition and other sections of the community for not standing by the principle and we were all but vilified for not adhering to what was a clear-cut case of discrimination and for not sticking to policy. It was a case where the opposition itself moved same sex couple amendments and insisted on them, yet that was a bill which it had opposed. We have the reverse situation here where the opposition supported same sex couple amendments but will now not insist on them in a bill that it supports. As I said in my speech the other day, you can understand people in the community being slightly cynical about that.

It has been argued that the legislation ought not to be held up on this particular sticking point because there are elements of the bill that are strong and should be supported. Senator Evans spoke to the wearing
of medals. I do not want to be dismissive of the issue of how and when medals are worn, but I do not believe it is as important as the human rights of Australian citizens. Senator Evans also said that the services bodies and veterans affairs bodies were strongly supportive of and keen for the legislation, and I do not doubt that for a moment. But I make the point that, in my experience, Vietnam veterans in particular are also strongly supportive of lesbian and gay people, both within and without the military. I think that they too would be disappointed that this issue has not been properly addressed.

I take serious exception to Senator McGauran chuckling at the notion of this issue being discussed in the chamber today. I make the point to Senator McGauran that lesbian and gay people in the defence forces put their lives on the line for this country and that their rights and responsibilities should be respected. Shortly after we discussed and debated the amendments the other night, to my surprise and delight I received the following email. I would like to take a moment to read it into Hansard. I know that the same email was sent to other senators, including opposition and government senators. I do not have consent to put his name in Hansard, but it is there in the email. I will call him Bob. It reads as follows:

Dear Senator,

My name is Bob and I am a Petty Officer in the Royal Australian Navy serving here in Canberra. It was with interest that I read the Hansard transcript from Tuesday 02 Dec 03, in particular the Defence Legislation Amendment Bill 2003.

Since September 2002, I have been fighting Defence for recognition of my relationship which just happens to be with a member of the same sex. It has been a difficult 12 months, however, my partner and I feel very strongly about having the discrimination removed from Defence Regulations.

In 1992, the ban was lifted on Gays and Lesbians serving in the Australian Defence Force, some 11 years ago. In the past 2 years Australia has been involved in conflict around the world where members of same-sex relationships have served. Currently if a member in a same-sex relationship were to die in conflict, their partner would receive nothing. This is unacceptable and unjust. We perform the same duties, however, we are treated as second class citizens.

My partner and I purchased our home in Queanbeyan in July this year—

Senator McGauran—it is always about you.

Senator GREIG—I am speaking of someone else, you fool!

The CHAIRMAN—I think you should withdraw that, Senator Greig. You might not like the comment that was put, and I am not agreeing or disagreeing with the comment, but I think that that is unparliamentary.

Senator GREIG—I withdraw.

Senator Brown—Mr Chairman, I rise on a point of order. I think Senator McGauran’s interjection was a reflection on Senator Greig and should be withdrawn.

Senator McGauran—If it has offended the senator, I am happy to withdraw it.

The CHAIRMAN—No, just withdraw unconditionally, Senator McGauran. I want to get on with the business of this place.

Senator McGauran—I was, in fact, being quite generous about the whole thing.

The CHAIRMAN—Senator McGauran, I am asking you to withdraw.

Senator McGauran—I withdraw.

Senator GREIG—For Senator McGauran’s enlightenment, as he was not listening properly, I am reading from an email; I am not speaking in the first person. I am reading a constituent letter. The email says:

My partner and I purchased our home in Queanbeyan in July this year, and as my partner was on
the contract, I only received half the Home Purchase Assistance Scheme (HPAS) (approx $6000 instead of approx $12000 which my fellow heterosexual colleagues would have received). So we personally know the effects of the current discrimination.

I thank you for supporting the Democrat amendments. I, along with many others serving in the ADF, would be disappointed should the ALP not insist upon the amendments if and when the bill arrives back from the House of Representatives.

Regards ...

It is signed by the constituent, from Russell Offices, here in Canberra. Regrettably, that is the situation we have before us, and the amendments will not be insisted upon. To some degree, this was a litmus test for Labor. It was an opportunity to show some sincerity in this area as opposed to what I would argue was the lack of sincerity with the same principle with a previous bill—the co-contributions bill.

I find it sad and strange that, at the very time that Mr Danby is circulating a petition in his electorate calling for members to sign on and support the notion that same sex couples should be given equality within the military, that is not what is happening with Labor’s vote here in the parliament. This was a golden opportunity to address this issue. It was an issue quarantined very much to one aspect of legislation and one aspect of defence. It had no spill-over or consequential effects. It would have given the opposition the golden opportunity to show that it could commit to this in a strongly principled way without having to use the argument of wanting comprehensive or wholesale reform, because this has no spill-over effect.

While I note again that Senator Evans has stated that Labor would have an audit and look at wholesale and comprehensive reform, many in the gay and lesbian community have heard that time and time again in previous elections. It is worth remembering that, when the ban on lesbian and gay people serving in the military was lifted in 1992, that was opposed by Mr Beazley, who was then Minister for Defence and who, but for two votes, would have been opposition leader as of a few days ago. So you can understand why people take that claim, that promise, that suggestion, with a grain of salt. The amendments should be insisted on, and I ask that the vote be taken formally when procedures allow for that.

The CHAIRMAN—Senator Greig, I presume you will call for a division. The division will take place at a later hour of the day.

Progress reported.

LEGISLATIVE INSTRUMENTS BILL 2003
Consideration of House of Representatives Message

Consideration resumed.

House of Representatives message—

(1) Clause 2, page 2 (table item 1), omit “Sections 1 and 2”, substitute “Sections 1, 2 and 2A”.

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

3. Schedule 1 Immediately after the commencement of Schedule 1 to the Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003

(3) Page 2 (after line 19), after clause 2, insert:

2A Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

(4) 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.

(5) Page 63 (after line 17), at the end of the Bill, add:

Schedule 1—Amendment of other legislation

Acts Interpretation Act 1901

1 Subsection 46B(3)

Repeal the subsection, 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.

Senator LUDWIG (Queensland) (1.45 p.m.)—Predictably the Howard government has used its numbers in the other place to reinstate the government amendments rejected this week by the Senate. The government’s amendments seek to redraft the provisions of the original legislation relating to prejudicial retrospective commencement of the legislative instrument. The amendments were circulated only after the government belatedly realised the original legislation put in jeopardy its absurd policy of retrospectively excising thousands of Australian islands every time a boat passed undetected through Australian waters.

The government should be ashamed and embarrassed that another of its policies has been found to breach a fundamental principle that it sought to enshrine in the Legislative Instruments Bill. The Manildra ethanol affair is exhibit No. 1 and the Melville Island affair is exhibit No. 2, both of which I referred to in the second reading debate. Together they demonstrate that the government will have serious trouble complying with its own legislation. They highlight why the legislation is sorely needed—to raise the abysmal standards of governance on display under the current Prime Minister. We also note that the government has not agreed to a Democrat amendment that broadened the circumstances in which rule makers are encouraged to consult before making legislative instruments, but this was fairly predictable from a government with such a feeble commitment to human rights.

It is almost 10 years since the first four legislative instruments bills were introduced into parliament. The opposition recognises that this legislation will bring considerable benefits to the community and believes it is time to give the legislation an opportunity to work despite the government’s backsliding.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.45 p.m.)—I move:

That the committee does not insist its amendment no. 3 to which the House of Representatives has disagreed and agrees to the further amendments made by the House.
It will be reviewed after three years, no doubt by a Labor government, and many problems with its operation will be able to be fixed at that time. For these reasons, the opposition is prepared to facilitate its passage through parliament this year.

Senator BROWN (Tasmania) (1.47 p.m.)—The opposition is wrong. The Greens will oppose the amendments from the House of Representatives. We supported the Democrat amendment originally put: that there should not ever be a repeat of the situation in which the Minister for Immigration and Multicultural and Indigenous Affairs was able to retrospectively take away the rights of people who landed at Melville Island. The amendments by the government in the House of Representatives do just that. It means that, in the afternoon or the evening, the minister can move retrospectively to deny people’s rights that were theirs earlier in the day. The amendments effectively mean that a regulation taking such action would take effect up until midnight the previous day. We will not support that. The whole intent and the whole spirit of such matters, all the way down the line in this parliament, is that you do not retrospectively take away an inherent right of people in this country of ours. That is what these amendments do. This should not be acceptable to the chamber. We will oppose the amendments from the House of Representatives.

Senator GREIG (Western Australia) (1.49 p.m.)—The Democrats are disappointed that the government has not agreed to our amendment, which would broaden the range of circumstances where consultation is required. The government claimed that it had abandoned the previous prescriptive consultation regime in an attempt to simplify this bill. However, its rejection of these amendments reveals that the government’s claims regarding simplicity are disingenuous. The Democrats had initially contemplated moving amendments to restore the previous prescriptive regime; however, in the interests of facilitating the expeditious passage of this legislation, which has been around for almost a decade, we decided not to pursue that particular avenue. The Democrat amendment represents a significant compromise on our part and is consistent with a new regime proposed by the government. Given the way in which the consultation regime is now established and the fact that a lack of consultation does not impact on the validity of an instrument, the Democrats amendment simply listed a range of very important issues which a rule maker should take into consideration when determining appropriate consultation.

The government’s rejection of this amendment also provides a scary reminder of just what the government cares about and what it does not. We are now left with a situation where consultation would be particularly encouraged if an instrument affects business or competition but not if it radically infringes on human rights or civil liberties or has a significant impact on the environment. Given the cooperative way in which the Democrats have worked with the government to ensure swift passage of this bill, we are very disappointed that the government has chosen to reject what is an eminently justifiable and sensible amendment for reasons which are far from convincing. For the record, I make it known that the Democrats will insist on this amendment.

The new government amendments obviously seek to achieve the same result as the amendments moved by the government in the Senate, which were rejected. The amendments purport to respond to a recommendation made by the Senate Legal and Constitutional Legislation Committee but
they go much further. Clearly they are designed to facilitate the kind of situation we witnessed recently, as Senator Brown said, with the excision of Melville islands from Australia's migration zone.

While the government claims it is not intending to achieve this result, it has provided no other reason for changing the word 'time' to the word 'date' in this amendment. While the actions of the government in this instance are hardly surprising and are entirely consistent with the very mean-spirited and cruel way in which it continues to deal with asylum seekers, it is particularly disappointing that Labor has chosen, I understand, to accept these amendments. Labor's response to the Melville Island debacle a few weeks ago represented what was an encouraging indication that its policy on asylum seekers and the Pacific solution might finally have been changing. Yet here we are, a few weeks later, and Labor is already retreating from the strong position it appeared to adopt on that occasion.

Having said that, the Democrats accept that there is some impetus to get this legislation passed. We are not, however, convinced that the swift passage of the legislation warrants the level of injustice that could potentially be perpetuated as a result of these amendments. The Democrats believe that Labor should demonstrate courage on this occasion and put the onus back on the government to get the legislation passed. We know that the government is eager to ensure passage of the bill, and in that context we believe that the rejection of these amendments may not necessarily have delayed the passage of the bill. I indicate that the Democrats do not accept the amendments made by the House of Representatives.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.53 p.m.)—I point out that the government has agreed to the majority of the amendments made by the Senate. We oppose the amendment to the consultation provision, and the reasons for that opposition have been stated both in this place and in the House. The government has also proposed five new amendments to restore the status quo with respect to the commencement of legislative instruments. The reasons for these amendments have also been set out in the debates on this bill earlier in the week.

**The CHAIRMAN**—We will deal with this issue in the same manner in which we dealt with the previous issue. We will postpone the division until after the division on the Defence Legislation Amendment Bill 2003.

Progress reported.

**Sitting suspended from 1.55 pm to 2.00 p.m.**

**QUESTIONS WITHOUT NOTICE**

**Aviation: Air Safety**

**Senator O'BRIEN** (2.00 p.m.)—My question is to Senator Ian Campbell, the Minister representing the Minister for Transport and Regional Services. Does the minister recall making the following claim in this chamber on Monday:

The government has shown caution throughout the process of reform to ensure that every stage of implementation of the reform is done with the fundamental requirement of air travellers' safety at its core. We will not as a government allow that to be compromised.

Will the minister provide an assurance that the Victorian airspace incident was not caused by the new airspace system, as is claimed by the Air Traffic Controllers Association? If not, will the minister now demonstrate the caution he referred to on Monday, stop compromising air travellers' safety and immediately suspend the new airspace reforms?
Senator IAN CAMPBELL—I thank Senator Kerry O’Brien for asking a question which is not only important to all air travellers; it is vital to the operators of general aviation and the broader aviation sector and it is critical to the success of the Australian economy because air transport is such a vital part of a flourishing internationally connected global economy. I listened to the reading from the Hansard of my statements on Monday. Senator O’Brien has asked me whether I stand by what I said on Monday. I do—word for word. The implementation of the airspace reforms is a 49-step process. Each part of that process can only be implemented after the safety case has been accepted by the Civil Aviation Safety Authority. Stage 2b, which was implemented this very day last week, had that CASA sign-off. It is important also to note that although some sections of the aviation community, such as the air traffic controllers—for whom we have enormous respect—have some reservations and concerns about this stage of the airspace reform implementation process, there is also a list of serious players in the aviation industry who are supporters of stage 2b and the process.

I reiterate that each stage of the process can only be implemented with CASA sign-off as to safety. They are the independent safety watchdog in this sector. The supporters of the process include the Royal Australian Air Force, CASA, the major airlines—Qantas and Virgin—sport aviation, Air Safety Australia and the Aircraft Owners and Pilots Association and many pilots across Australia. We do hear from pilots and air traffic controllers who have reservations. We do not often hear the names of those who support the process.

The report of a separation occurrence involving a Virgin aircraft and a VFR aero-plane in E airspace near Melbourne yesterday morning involved a third aircraft—a Beech King Air, which was on IFR. It was in the vicinity, but at this stage does not appear to have been a part of the occurrence. I understand that the pilot of the Virgin Blue 737 received a resolution advisory on his traffic alert and collision avoidance system instructing him to take action to avoid another aircraft in the vicinity. The occurrence is under investigation by the ATSB and the results of that investigation will be made public.

Resolution advisories are not uncommon. Around 100 were reported in the past 12 months. Clearly they will draw attention in the current period—only a few days after the implementation of stage 2b of the reforms. But, unlike many others, I am not prepared to speculate on the reasons behind yesterday’s incident, to second-guess a tried and proven process of investigation that is now under way. (Time expired)

Senator O’BRIEN—Mr President, I ask a supplementary question. I note the minister’s referral to the approval of the theoretical safety case, but further to the minister’s answer I ask: if the minister cannot confirm today that the airspace reforms did not contribute in any way to yesterday’s near miss involving passenger and emergency aircraft, how can he guarantee air traveller safety? Why won’t the government err on the side of caution and suspend the system until he can confirm that the system is not flawed?

Senator IAN CAMPBELL—Mr President, I think it is fair to say that Senator O’Brien would not have caught the tail end of my remarks because you were drawing my attention to the conclusion of the time limit. I said that, unlike him, we would not seek to second-guess what is a tried and proven process of investigation that is now under way. That would be inappropriate.
Secondly, the senator implies that suspending the stage 2b reform process would enhance safety. The practical reality, however, is that it would reduce safety because amongst the thousands of pilots around the country who have been trained to fly under the new system that was introduced and widely known and acknowledged last Thursday you would create absolute abject confusion and decrease safety. So it is an absurd suggestion, and Senator O’Brien should know better.

DISTINGUISHED VISITORS

The PRESIDENT—I draw the attention of honourable senators to the presence in the gallery of former distinguished Leader of the National Party in the Senate, former senator John Stone. Welcome back to Canberra, John. I hope you enjoy question time.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Defence: Antiballistic Missile System

Senator FERGUSON (2.07 p.m.)—My question is to the Leader of the Government in the Senate and Minister for Defence. Will the minister inform the Senate how the Howard government is working with its allies to counter the growing threat posed by ballistic missiles? How will this action help protect Australians both here and overseas? Is the minister aware of any alternative policies?

Senator HILL—I thank Senator Ferguson for that important question. The defence of Australia and Australian interests is obviously among the highest priorities of the Howard government. Despite being left a $10 billion deficit by the former Labor government, we have in fact increased our investment in Australia’s defence capabilities. Further, we have always sought to take the full benefit of technology advances and to maximise the security benefits which flow from our alliance with the United States. There is no argument that the spread of long-range missile systems poses a new and dangerous threat to the international community. They are relatively cheap and increasingly available. In the hands of rogue states they could be used as a tool for blackmail as well as a weapon capable of inflicting mass casualties.

To that background, I can inform the Senate today that the government has decided that Australia will participate in the United States missile defence program. Australia’s contribution will, of course, be only a small part of what is a massive program, but the benefits in terms of our future national security can be significant. New technologies have substantially improved the capability to intercept ballistic missiles before they reach their targets. This offers a new level of defence—in defence of nation states and in security of forces in the field.

It can, of course, be said that we have been contributing to missile defence by the early warning facilities we have maintained for many years. Early warning of ballistic missile launches was a deterrent to their launching, so in many ways this program is a contemporary version now that there is a growing capacity to defeat the missile in flight. It should be stressed that this program is defensive: it does not give an offensive capacity. By being able to defeat a missile, it reduces the value of states developing and deploying these systems. It should also be stressed that, whilst the US might be deploying the first part of its system next year, this is a long-term project. What parts Australia might take up and in what time frame is still in the future. But making a start is, we believe, important—and the start we will make is to work with the US to identify our priorities, what contribution we might be able to make and what industry opportunities are presented by various components. That work we are currently doing and will be doing for
some time. Potential opportunities could lie in expanded cooperation to help detect missiles at the point of launch and therefore get early warning of an impending attack, acquisition of or other cooperation in fields of ship based and ground based sensors, and science and technology research, development, testing and evaluation.

Obviously we would like Labor’s support in what is clearly an important national security priority, but I have to say that, on the basis of what the new Labor leader, Mr Latham, has said in the past, we are unlikely to get it. In fact, on 18 March this year Mr Latham bagged the idea of missile defence. In a strong anti-American speech he called for realignment on the part of Australia.

Senator Chris Evans interjecting—

Senator HILL—Senator Evans might recall what he said. He said:

Just as Curtin established US relationship, just as Calwell established the European Migration Program and just as Whitlam established relations with the People’s Republic of China, the next Labor government will have to realign and rebalance Australia’s foreign policy.

(Time expired)

Aviation: Air Safety

Senator MACKAY (2.11 p.m.)—My question is to Senator Campbell representing the Minister for Transport and Regional Services. It relates to the new airspace system and follows on from the question of Senator O’Brien. How can the minister continue to maintain that Australia now has the US system when there are fundamental and material differences between the two countries, such as the amount of radar coverage? How can the minister continue to maintain that the national airspace system is a safer system when airlines and pilot associations are warning their pilots to exercise extreme vigilance? Why is the government blindly pushing ahead with these airspace changes when key organisations of air traffic controllers and commercial, domestic and international airline pilots continue to maintain their position that they are not safe?

Senator IAN CAMPBELL—We take the expert advice of the safety agency, the Civil Aviation Safety Authority, in relation to that, and the government have said that we will not implement any change to airspace arrangements and management systems without a sign-off by CASA. They stand by their sign-off. It is, of course, entirely appropriate that pilots of any size aircraft deal with air safety and air traffic control issues with caution and vigilance. For example, pilots have decided to start their descent to Launceston airport, I think it is, a little earlier because of the changes that are taking place at Launceston airport. That is a cautious approach which I think all Australians would welcome.

Senator O’Brien—Because the system is less safe.

Senator IAN CAMPBELL—Senator O’Brien interjects. What he would do, based on what he has been told by some players in the aviation industry, is to claim that the new system is less safe. What Senator O’Brien does that the government refuses to do is to place himself above the expertise of CASA. Senator O’Brien may well have a lifetime of skill sets in making judgments about airspace safety and airline safety. I do not know. I have not read his CV. I have read the CVs of many Australian Labor Party senators and I have seen that many of them have skills in organising trade unions and other activities. Senator O’Brien may be different from every other Labor Party senator—

Senator Conroy—You’re just a jumped-up real estate agent.
Senator IAN CAMPBELL—Come in spinner, Senator Conroy. Many Australian Labor Party senators have fantastic credentials for organising Labor Party branches, organising unions and making sure that the unions have control of the Labor Party policy apparatus. Perhaps it is the unions that have control of the Labor Party’s airspace policy apparatus. Perhaps Senator O’Brien is in fact far more skilled in air traffic safety than the Civil Aviation Safety Authority; but we take our advice from the Civil Aviation Safety Authority, which has been very successful at ensuring that Australia has very safe air traffic management and has a fantastic, internationally acknowledged air safety record. That is part of the reason why we place our trust in CASA. All parliamentarians, regardless of their political persuasion, should congratulate CASA on that sound performance.

In relation to the difference between the United States and Australia, we are implementing a system that has successfully worked in the US but we are doing it in a way that ensures that we recognise the differences between the US and Australia—and there are, as Senator Mackay has accurately pointed out, some significant differences as well as some similarities. We are not just fitting a US system and putting it lock, stock and barrel into Australia; the implementation group is looking very cautiously, with safety as the pre-eminent concern, to ensure that the aspects of the system are adapted to the Australian environment in an entirely appropriate way. I think Senator Mackay may have inadvertently assumed that the government is just importing the system without any adaptation to the Australian circumstances. That is not the case, and I am happy to reassure her in that regard.

Senator MACKAY—Mr President, I ask a supplementary question. I thank the minister for the answer but I remind the minister that this is a very serious issue and I would appreciate its being treated very seriously. Now that it is over 24 hours since the near miss in Victoria yesterday that involved a major passenger airliner with over 100 passengers, why can’t the minister provide a guarantee and confirmation today that this was not in any way a result of the government’s new system? Why should the flying public have to wait for a report to be released at an indeterminate time to determine the safety of the flights that they are taking today—that they are okay? Why should they have to wait for that? Can the minister provide a guarantee today? What about the people who are flying today, the people who are flying tomorrow and the people who are flying the day after that—what do they need to be reassured of from the government’s perspective?

Senator IAN CAMPBELL—It is a very serious issue, and if you wanted to treat it seriously you would respect the fact that the Australian public would want to be assured by the expert agency that does the investigations and not have politicians second-guessing that expert agency. That is the appropriate course.

Senator Mackay—Minister Anderson said he’d take personal responsibility.

Senator IAN CAMPBELL—The minister will not seek to second-guess an investigation process which is in fact tried and proven. There have been, as I said in an earlier answer, over 100 similar resolution advisories—as this is officially called—over the past 12 months. If Senator Mackay were serious she would have come into this chamber on 99 previous occasions and sought such assurances. We want to take expert advice on this, not play politics with it.

Immigration: People-Smuggling

Senator EGGLESTON (2.18 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs,
Senator Vanstone. Will the minister inform the Senate of how the government is working with our regional neighbours to fight people-smuggling? Will the minister inform the Senate of alternative policies in this area?

Senator VANSTONE—I thank Senator Eggleston for his question. Regional cooperation arrangements are a key plank in fighting people smugglers. Australia has informal arrangements with Indonesia and, on a smaller scale, with Cambodia, Papua New Guinea and East Timor. These arrangements effectively tell people smugglers in the clearest possible way that Australia’s borders are closed to their trade. They effectively say, ‘Don’t bother trying because your cargo will not get here; you will not be successful.’ Consequently, we hope, they will eventually go out of business. It is in effect like dealing with a bank robbery. The first thing you want to do is stop the bank from being robbed. The first thing we want to do is stop people being able to come to Australia. That demonstrates clearly how we are cooperating with our neighbours.

It is important to understand the reasons for this. People-smuggling is not just a problem for Australia; it is an international problem. Millions of people are apparently trafficked and smuggled each year. It is worth billions and billions of dollars. This is not a problem for us alone. It is a worldwide problem and it is especially a problem in our region. So it is a problem that we have to work on together, and that is why we have these arrangements. They are effective. They are very humane because they ensure that people who suffer from the treatment of people smugglers are, if they want to make a claim, processed by the UNHCR appropriately. Having arrangements whereby people who want to make an asylum claim are processed by the United Nations High Commissioner for Refugees is an appropriate way to go about this.

Labor of course, we understand, want to throw these arrangements away and pursue an open-door policy. In fact we now have a proposed coastguard that is going to bring the ships in and say, ‘Come—we’d like to bring you to Darwin.’ But, more importantly, as a consequence of the new Labor leadership it is important to understand where they will go with these regional cooperation arrangements. What attitude would the Labor Party have to recognising that this is a regional problem? It is not just our problem; it is a regional problem. Mr Latham was quoted as saying:

It would be extremely naive for Australia to ignore the way in which Indonesia, in a highly irresponsible and illegal manner, has tried to pass on the flow of asylum seekers to our country.

That demonstrates that Mr Latham is a leader who wants to say that all of this problem is Indonesia’s fault. That is a clear misunderstanding of the situation. Clearly he does not understand that these people might come through Indonesia but largely they do not come from Indonesia. It is as much a problem for Indonesia as it is for Australia. You will not solve this problem by taking a bat, chasing Indonesia down the street and breaking their arm by saying, ‘It is all your fault.’ You can take a bat to taxi drivers, but not to other countries. It is just not appropriate. You will have no success in getting regional cooperation arrangements if what you want to say is that it is everybody else’s fault.

Mr Latham’s views have been repeated in other ways. In May this year he said:

Australia sits next to Indonesia, the world’s largest archipelago, also without effective maritime policing.

Not only is he making a comment about what he thinks ought to be done in Australia;
now he is an expert on what Indonesia ought to do. He said:

This is why we have so many problems in our part of the world. (Time expired)

Senator EGGLESTON—I ask a supplementary question. Is there any proposal to make these arrangements more formal in the sense of providing Australian assistance to the Indonesian authorities to broaden their means of dealing with these incursions?

Senator VANSTONE—The point here is that Mr Latham needs to understand that you cannot take a bat to Indonesia and say it is all their fault. You cannot say they are highly irresponsible and illegal because people smugglers use Indonesia as a stopping post on the way to Australia. You cannot profess to be an expert in what Indonesia ought to do in its border protection, nor can you come to the tremendous conclusion that, because they do not have three ships and coastguard like Labor wants to have, that is why we have problems. As if we have problems because there is an archipelago country to our north! We have problems because people-smuggling is an international problem. It will only be solved by cooperation and by tough border controls. Labor members opposite need only look to Mr Blair to get a clear understanding that around the world people are recognising that Australia has a good system and that we have to be tough on border control and tough on people-smuggling.

Telstra: Emergency Call Services

Senator LUNDY (2.25 p.m.)—My question is to Senator Kemp representing the Minister for Communications, Information Technology and the Arts. Is the minister aware that a Canberra family of seven lost their home in a house fire in the early hours of yesterday morning because Telstra operators took 20 to 25 minutes to answer the 000 emergency call in a Melbourne call centre? Does the minister think that Telstra should take responsibility for the loss of this home and its contents given that a senior firefighter, who attended the fire after a neighbour had driven to the fire station to raise the alert, commented that the house would not have been destroyed if the emergency call had got through to them earlier? What action is the government going to require of Telstra in response to this terrible incident, including ensuring that Telstra emergency services are up to scratch?

Senator KEMP—Thank you, Senator Lundy, for that question. Of course, all of us are very sorry to hear the story that Senator Lundy has conveyed to the Senate. We feel very sorry for the family that was affected by that particular house fire. I will turn to the issue of the emergency call service. I think Senator Lundy raised the issue that there were some delays in responding to this. I do have some advice, and I will provide that to you. The government is committed to ensuring that people have reliable access to emergency assistance and takes any claims of the poor provision of emergency call service arrangements very seriously. The emergency 000 call service currently operated by Telstra as part of its responsibilities as designated universal service provider is an operator assisted service that connects a caller to police, fire or ambulance in a life-threatening or time critical situation. Telstra operates the 000 service from two centralised emergency call centres in Darling Park, New South Wales, and I think Senator Lundy mentioned the centre at Windsor, in Victoria. Telstra has a legal obligation to answer 85 per cent of calls each month within five seconds and 95 per cent within 10 seconds.

I am aware of the delays in accessing the 000 service on 2 December 2003. That was the particular day when there were attempts to report a house fire in Canberra in the suburb of Gilmore, which is the matter that Senator Lundy has brought to the Senate’s
attention. Telstra has advised that calls to the 000 emergency call service increased five-fold as a result of the severe Melbourne storms. Under the two call centre structure, Telstra uses a virtual queue, which means that the first available operator receives the next presented call irrespective of where the call originates. I am advised by Telstra that, due to the large volume of calls, there were regrettably some delays for people calling the 000 service. The operators were also experiencing delays in connecting callers to the respective state emergency service organisations, which meant that operators were kept on the line before a call could be transferred. Telstra has advised that it is currently discussing these issues with the relevant emergency services organisations.

As Senator Lundy will know, the Australian Communications Authority is responsible for monitoring the operation and performance of the 000 emergency call service. The relevant minister has been advised that the ACA is investigating the circumstances which led to the delays in the 000 call answering time. The government will monitor the progress of those investigations and await the outcome of the ACA’s inquiries. Obviously, it is not acceptable for responses to emergency calls to be delayed. If the ACA identifies any problems with the current 000 regulatory arrangements, let me assure Senator Lundy and senators that the government will act quickly to address them and ensure the ongoing efficiency of our emergency service response system, which has a reputation—and I think it is a justifiable reputation—of being the best in the world. Senator Lundy has brought to the attention of the Senate a situation which is most unfortunate. It involves tragic circumstances for the family. I would like to assure Senator Lundy that we are looking into the circumstances which led to these delays to see whether we need to make any further improvements.

Senator LUNDY—I thank the minister for his answer and ask a supplementary question. I am very glad to hear that the government is taking this seriously. I would like to ask the minister to advise the Senate what is being done, beyond the ACA inquiry you described, to ensure that this does not ever happen again and to take on notice any other cases which have arisen because of a delay in the response time of the Telstra 000 emergency services number. Finally, isn’t this an example of the tragedy that can result from a reduction of Telstra services to regional areas and yet another reason why Telstra should not be further privatised?

Senator KEMP—Senator Lundy has raised a genuine issue with the Senate, and the government is responding to that, as I have outlined in detail. It is unfortunate that, at the end, you attempt to make a political point. You and I will differ over the sale of Telstra, and that is a fair debate. You are drawing a very long bow to associate this debate with the problem that you drew to the attention of the Senate. My view is that it is far better that we deal with the specific issue. I mentioned the inquiry that was going on. Clearly, it is best that we await the outcome of the inquiry. Further, it is not correct that there has been a reduction of services by Telstra to regional and rural Australia.

Trade: Free Trade Agreement

Senator BARTLETT (2.31 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Trade. I draw the minister’s attention to the recently released report by the Senate Foreign Affairs, Defence and Trade References Committee entitled Voting on trade and in particular its recommendation that major international trade agreements such as the proposed Australia-
USA free trade agreement should be brought before parliament for scrutiny before being signed. Can the minister confirm that the government’s preferred approach and preferred timetable is to finalise a free trade agreement with the USA within the next two months? Will the minister give an undertaking that an open parliamentary debate on the finalised text of any free trade agreement will occur before any agreement is signed by Australia?

Senator HILL—What is being suggested is to seek to convert our system into something more akin to that of the United States, which I find quite interesting coming from the Australian Democrats. Our system is that these decisions are executive decisions, and the executive is responsible to the parliament and, through the parliament, to the people. That system has been modified somewhat in recent years to enable at least a degree of parliamentary participation in the process, and that is quite important. Basically, we have a parliamentary committee which is charged to consider agreements such as this and to give advice to the parliament. That advice will no doubt contribute to better informed parliamentary debate and, hopefully, better informed community debate. We think that the system that we have in this country serves Australian interests well and we do not see in this instance any reason to try to transform ourselves into a pale imitation of the US Senate.

Senator BARTLETT—Mr President, I have a supplementary question. I find it curious, in turn, for the minister to be so dismissive of the United States’s approach to important treaties. Doesn’t the minister agree that a free trade agreement with the USA will have a major impact on all Australians and many and varied aspects of the Australian economy and the Australian community? How can the minister justify entering into such a major agreement, with such potentially wide-ranging, long-term impacts, without enabling open public debate and parliamentary debate on the details before they are irreversibly locked in?

Senator HILL—The purpose of this agreement is to benefit Australia. Australia is in these negotiations looking for new market opportunities in the largest market of them all. Through that, we can help grow the Australian economy, create wealth and do all the sorts of things that I would have thought the Australian Democrats would want in terms of supporting health, education, social security and the like. This government will take the decisions on the free trade agreement that it believes are in the Australian people’s interests, and the Australian people will have the chance to judge upon it.

Immigration: People-Smuggling

Senator FAULKNER (2.35 p.m.)—My question is directed to Senator Vanstone in her capacity as the Minister for Immigration and Multicultural and Indigenous Affairs. Is the minister aware of reports in today’s media that the people-smuggling ring behind the Minasa Bone has been operating inside Australia for some five years? Can the minister inform the Senate whether this people-smuggling ring has come to the attention of the government’s People Smuggling Task Force or been the subject of investigations by the Australian Federal Police? Has any government action been taken in relation to this people-smuggling ring?

Senator VANSTONE—I thank the senator for his question. No, I have not seen those media reports, Senator Faulkner, but they do not surprise me; lots of things are in the paper that are not always helpful to law enforcement. The situation is this. The Australian Federal Police and DIMIA people-smuggling investigations on the Minasa Bone commenced very early after the vessel’s arrival on Melville Island on 4 Novem-
ber, with some passengers and crew interviewed prior to return. Further interviews were conducted by the Federal Police and DIMIA officers in Jakarta, working through the proper channels to keep maintaining good relations. A joint AFP-DIMIA team assesses the potential for prosecution and gathers information from a range of sources. The investigation involves people both onshore and offshore. With respect to that investigation, that is all it is appropriate that I say at this point.

Senator FAULKNER—I ask the minister if she would take on notice what I believe is an important question in relation to a people-smuggling ring behind the Minasa Bone that in part has been operating in Australia. I would appreciate it if you would take that on notice, Minister. I also ask, as a supplementary question, whether it is the case that the government’s new policy of letting people-smugglers go—a good example of which is what we saw with the Minasa Bone, where people-smugglers actually left Australia and returned to where they came from—will prejudice any criminal prosecution against Australian operatives because of the inability of the crew on boats to give evidence to an Australian court?

Senator VANSTONE—I have been asked this question a number of times by people who wish to try and put the proposition—in a somewhat futile manner—that this government is somehow soft on people smugglers. The facts are quite the opposite—I think the record shows that that is clear. The reason Senator Faulkner asks this question is, frankly, that Labor does not welcome the success that this government has had in terms of people smuggling. Let me answer the question by saying this: our first priority is to put people smugglers out of business. There are two ways of doing that. The first way—and, we believe, sometimes the most effective way—is to render their smuggling activities ineffective, because when you cannot promise a group of people that you will get them to Australia, pretty soon they stop paying you money to get there. So by rendering this people-smuggling attempt ineffective we have made a very significant contribution to damaging the work of the people smugglers. (Time expired)

Family Services: Work and Family

Senator HARRADINE (2.39 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. What is the government’s response to recent NATSEM research demonstrating that low-income working families with children face high effective marginal tax rates of between 60 per cent and 80 per cent and that these families often gain very little disposable income when the mother increases her paid work hours? I refer also to a Sydney Morning Herald article on 30 July by Ross Gittins concluding that the lower the income and the more children a family has, the higher the marginal tax rate if they attempt to go out to work. Is that fair? What is the government planning to do to fix this huge disincentive for those struggling to work and improve the lot of their families?

Senator COONAN—Thank you, Senator Harradine, for that very thoughtful question. I want to assure Senator Harradine and the Senate that the government takes very seriously indeed the need to improve work force incentives and participation rates, particularly for those who, under previous arrangements, appear to have been trapped on welfare. Of course it is important to have regard to the impact that the tax system has on those families. I make the point that all families were made better off by the new tax system
changes which increased family assistance payments, lowered family assistance withdrawal rates and cut personal income taxes. The new tax system increased assistance to families by around $2 billion a year. Prior to the new tax system, many families were facing marginal tax rates of either 34c or 43c in the dollar and a family payment withdrawal rate of 50c in the dollar. The new tax system significantly reduced these to 30c in the dollar personal income tax and a 30 per cent withdrawal rate. The sudden death cut-off to basic family payment that was such a disincentive, and worked so unfairly, was also removed.

The research of the National Centre for Social and Economic Modelling—or NATSEM—that Senator Harradine referred to, has found that the number of families with effective marginal tax rates of over 80 per cent has decreased significantly since 1997 and that work force incentives have improved compared with the old family payment and the previous tax system. Increased assistance and decreased taper rates mean that more families now receive assistance in raising their children. It also means that effective marginal tax rates for some families that were previously receiving no assistance at all may have increased.

To suggest in those circumstances that Australian families are worse off is significantly misleading. There have been increases in real income. Since coming to office in 1996 the coalition government has delivered substantial increases in household after-tax incomes adjusted for inflation—otherwise referred to as disposable incomes. Treasury analysis that I have available here shows that the real disposable income for a number of respective cameos has increased. For example, a typical couple with two children has experienced a 10 per cent increase in real disposable income; a sole parent with one child has experienced a 17 per cent increase in real disposable income; and a typical pensioner couple has benefited from a six per cent increase in real disposable income. So I would not accept that the NATSEM findings accurately reflect the changes that this government has introduced as part of the new tax system. I always remain interested, as does this government, in hearing about any injustices impacting unfairly in the tax system. I would like those instances to be brought to my attention because we have an ongoing interest in making the system as fair as possible.

The PRESIDENT—During the answering of that question there were at least four senators standing around the chamber. I draw honourable senators’ attention to the standing order relating to people standing in the corridors. I know that it is the last question time for the year and a lot of people want to catch up with people but it is disorderly and I remind senators that I would appreciate it if there could be the least amount of standing around in the chamber.

Imigration: Visas

Senator KIRK (2.44 p.m.)—My question is to Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs. Can the minister confirm that the government has recently entered into a new agreement with the French government regarding the issuing of working holiday visas to French nationals wishing to live in Australia? Can the minister explain what security or checking arrangements are undertaken for people applying for visas under these arrangements?

Senator VANSTONE—I thank the senator for the question, because it gives me the opportunity to highlight that the government has been working very hard to extend opportunities for young Australians to travel overseas and work, and for Australians here to get the benefit of people from overseas com-
ing here on working holidays as well. There have been no changes to the checking arrangements for visas, nor do I assume that there is any reason to make any.

Senator KIRK—Mr President, I ask a supplementary question. Can the minister advise whether Willie Brigitte would have been eligible to come to Australia under one of these working holiday visas? Why does the minister refuse to do anything to better protect Australia by tightening up security checking systems, particularly now that it is well known that Australia is an easy target for terrorists coming through the front door?

Senator VANSTONE—The circumstances of Mr Brigitte coming to Australia have been well canvassed in estimates committees. If Senator Kirk has not had the opportunity to read the Hansard, I refer her to that. That will make very clear the point at which Australia had advice that there was any interest of a security nature in Mr Brigitte. It will also confirm how quickly and effectively Australian law enforcement agencies swung into operation and successfully undertook their activities after that notification. Senator, with respect, I think you need to read the Hansard of questions that your colleagues have asked and you will get the answers.

Australian Labor Party: Centenary House

Senator BRANDIS (2.46 p.m.)—My question is to the Special Minister of State, Senator Abetz. Will the minister inform the Senate what rental the Australian National Audit Office is being charged for its premises at Centenary House? How does the rental charged for the Labor Party owned Centenary House compare with the current commercial property rental rates in Canberra? What can be done to end this outrageous, disgraceful rort?

Senator ABETZ—I can inform Senator Brandis that the current market rate for A-grade commercial property in Canberra is $350 per square metre. As the government, we practise responsibility to protect the inheritance of future generations. So the government was horrified to learn that Labor in their death throes in the early nineties stitched up a rental rort deal which fails every test of integrity and commercial reality. In 1993 the Labor government hatched a deal whereby a Labor owned property was leased for 15 years to the government. The rental clauses were so loaded that by the end of the lease Labor will have rorted an extra $36 million from the taxpayers of this country, above and beyond normal profits. This year alone it is a rort of $3.5 million above market value. Today the market says $314 per square metre for Labor’s Centenary House; Labor rorts $871 from the taxpayer.

We know that Labor is divided on doing what is in the national interest, like improving Medicare, securing our borders, and maintaining Work for the Dole and the American alliance, but one thing that I have found that unites all these tribes—the Creanites, the Beazleyans, the Lathamites, the Carmelites and even the one Ruddite—is the ripping off of the Australian taxpayer to line their party’s coffers. We know that Mr Latham busted the arm of a cabbie over the price of a miserly cab fare. How many arms would he break to keep an extra $36 million in Labor’s coffers? Just imagine the early literacy programs you could run with an extra $36 million. Ending this sort of a rort would be a story that Mr Latham might be able to tell future generations. We could use the money for health services, or, if Mr Latham is serious about tax cuts, he could make one of his own and end this outrageous rental rort.
I issue the same challenge to Mr Latham that I issued to his predecessors, Messrs Beazley and Crean. But on this occasion I do not have to come up with 50c, because Mr Latham can now walk around to the office of the Labor president, Ms Carmen Lawrence, at room 197 in this place, and instruct her to make the Labor Party renegotiate the rental agreement. On 18 September this year I wrote to Mr Crean asking that a fair, impartial arbitrator be appointed to re-establish the lease on a firm commercial foundation. I never received a response. Today I wrote to Mr Latham asking him to do the right thing. As Gough would say, ‘It’s time.’ It’s time for Mr Latham to stand up against Labor’s rorts, greed and self-interest. It’s time to show integrity, leadership and, most importantly of all, respect for the Australian taxpayer. I table my letter to Mr Latham.

Howard Government: Expenditure

Senator FAULKNER (2.51 p.m.)—How corny was that? My question is directed to Senator Hill, the Minister representing the Prime Minister. Is the minister aware that not only has there been a massive blow-out in the number of consultants and contractors hired by the Commonwealth over the past seven years but the cost per consultant has almost doubled—from $80,522 in 1997-98 to $156,321 in 2002-03, a rise of 94 per cent? Given that this issue was raised with the Department of the Prime Minister and Cabinet at the beginning of last month and that the department said they would investigate, is the government moving to rein in this massive expenditure, which has now exceeded $2 billion in just seven years?

Senator HILL—This is an amazing question to come from the ALP because they were the party that left us with a deficit of $10 billion in their last year in office. They left us with a debt of $90 billion through inept economic management. They were unable to responsibly manage their own budget. What this government has done—

Opposition senators interjecting—

Senator HILL—It is part of the answer. This government has been able to rein in expenditure. The implication in Senator Faulkner’s question is to the contrary. It was Labor that could not control expenditure. This government has been able to achieve surpluses and it has done it by getting control of expenditure. It is true that, as the federal Public Service has contracted, there has been some expansion in the number of consultants. There is benefit in that because you bring in specialised skills for specialised purposes. That is a logical and sound way to go, provided the overall cost is constrained. That is the point. This government gets better productivity through a more appropriate mix of permanent employees and specialised consultants than the old way as conducted by Labor, which ran up those huge deficits.

Each department and each minister will obviously work to ensure that the right mix is produced to deliver the best productivity and the best outcomes in terms of good public sector management, but it is not surprising. I would suggest to the senator, that, as the public sector has contracted, there has been some expansion in the number of consultants. But the test really is the bottom line. The test is whether public expenditure is being controlled. Under this government, it is being controlled and there have been huge benefits to the Australian economy, to small businesses and to every sector of the Australian economy from that competent, efficient economic management.

Senator FAULKNER—Mr President, I ask a supplementary question. I note the minister said, in trying to justify this blow-out in consultants and contractors, that you needed ‘specialised skills for specialised services’. Can the minister then explain the ra-
tionale behind the decision of the Department of the Prime Minister and Cabinet to spend $16,550 on a consultant to advise on how to choose presents—gifts—for official occasions and 'provide evaluation support'? Given the embarrassment that this government has had in relation to its wine consultant, what sort of Christmas present is this—over $16,000 of taxpayers' money for a gift consultant?

       Senator HILL.—That is a silly supplementary question. What Labor would have done was employ a team of public servants to do the same thing. It would have a team of public servants contracted on a full-time basis to give occasional advice. That is the very point that I was making. If you need expert advice on a specific issue, pay for it and then you do not have the ongoing cost. Labor's way was a bloated public service, huge deficits and economic management that cost all Australians.

   Environment: Queensland

       Senator LEES (2.56 p.m.)—My question is to the Minister representing the Prime Minister, Senator Hill. Minister, given the federal government's financial support for the end of broadscale land clearing in New South Wales, why won't the government release the $75 million that would see an end to broadscale land clearing in Queensland? Also, following yesterday's very welcome Great Barrier Reef announcement, which establishes the largest network of marine sanctuaries on earth and gives some certainty to those who fish those waters, why won't the Prime Minister now provide certainty for the land-holders of Queensland by delivering the $75 million, which the government committed to in May?

       Senator HILL.—I thank Senator Lees for acknowledging the historic announcement yesterday in relation to the conservation of the Great Barrier Reef. It has not come about without a lot of effort. I commend Minister Kemp. This has been a long process of consultation with all interests—conservation interests, tourism interests, the scientific community and fishing interests—to achieve what this government always seeks, and that is a sustainable ecological outcome which can provide economic opportunities in a way that does not degrade the natural asset. That is what this government is all about and, as is demonstrated by yesterday's announcement about the Great Barrier Reef, it can be achieved.

       The government is approaching the issue of broadscale land clearing in Queensland from the same philosophical basis. We want a good outcome that will protect the natural system whilst, at the same time, allowing responsible management of the land and allowing the rural community to earn income from it. That is part of a sensible economic and social mix in this country. It has been difficult to achieve in Queensland. Senator Lees would know that it has been difficult to achieve, but this government is in these negotiations in good faith. It has shown it has been able to do it in relation to other sectors. It is prepared to invest, as Senator Lees said, a substantial sum of money towards achieving that outcome, but the government has to be satisfied that the final deal, which requires cooperation and implementation by the Queensland government, will achieve those goals. Those negotiations are ongoing and the government hopes that they will be successful in the near future.

       Senator LEES—Mr President, I ask a supplementary question. Can I ask the minister to define the 'near future'? We have now been waiting since May. We have a result on the reef; why can't we get a result on land clearing? In particular, Minister, I ask: is the
issue also on the table of the 1.7 million hectares that could still be cleared, even if we get an end to land clearing, because of the permits that are already issued? Is your government prepared to at least buy out those permits rather than seeing another 1.7 million hectares cleared after the deal is done?

**Senator HILL**—For the outcome to be successful, to have public support, it has to be balanced. It has to be one that respects the rural community and respects their responsible management of the land but one that also respects the ecological systems, and that is what this government is seeking. It will be a balanced outcome, but it does require the support of the Queensland government. The Queensland government is primarily responsible for land management in Queensland. Rather than just pulling stunts, if Mr Beattie would properly come to the table and work with us cooperatively to achieve that outcome, that would be of benefit to not only the people of Queensland but the whole of Australia. Mr President, I ask that further questions be placed on the Notice Paper.

**QUESTIONS WITHOUT NOTICE:**

**ADDITIONAL ANSWERS**

**Agriculture: Sugar Industry**

**Senator KEMP** (Victoria—Minister for the Arts and Sport) (3.00 p.m.)—On 3 December 2003 Senator Cherry asked me a question regarding the Nambour sugar mill and the Queensland sugar industry. I undertook to provide additional information to Senator Cherry—who, unfortunately, has left the chamber. I seek leave to incorporate the response, which has been provided by the Minister for Agriculture, Fisheries and Forestry, in *Hansard*.

Leave granted.

*The document read as follows—*

I am aware that, after more than 100 years operation, the Moreton Sugar Mill at Nambour on the Sunshine Coast has ceased operations. I am advised that late last year, Bundaberg Sugar took the decision to close the Mill at the conclusion of the current season. Unfortunately Bundaberg Sugar has stated that the Mill is no longer making a profit and has been operating at a loss for several years.

The closure of this Mill is extremely disappointing, particularly for the approximately 150 farmers and their families which supply the Mill. The closure also further highlights the difficult circumstances facing the entire Australian sugar industry, and the need for ongoing reform, if the industry is to remain sustainable and profitable into the future.

In recognition of the sugar industry’s circumstances, the Australian Government has provided a range of assistance measures in recent years to eligible cane farmers— including those in the Nambour area. As I mentioned in the Chamber earlier in the week, the Australian Government has provided over $80 million in assistance to the sugar industry in recent years.

Cane farmers have been provided with several periods of income support assistance since 2000 and during the most recent period of income support, which concluded on 30 September this year, all recipients were also provided with access to business and financial planning assistance, to help them seriously consider their options for the future.

In addition to this assistance, the Government has several other measures in place for farmers in the Nambour region. Growers who previously accessed income support may also be eligible for exit assistance of up to $45,000. This assistance is provided to farmers to either move into another industry or leave agriculture altogether. Assistance under the FarmHelp programme may also be available to eligible growers facing serious financial hardship.

Further to this assistance, the Australian Government has six Sugar Executive Officers in place in the regions, working closely with industry at a local level on a range of reform measures. The officer in the Sunshine Coast region is working with affected farmers, local and state governments on the impact of the Mill closure and possible options for the future.
As I said in the Chamber earlier this week, it is the Beattie Government that has the power to reform the Queensland Sugar Act to ensure that farmers will have a viable and profitable future. But while Mr Beattie continues to lay blame on the woes of the industry on everyone but his Government, you have to ask yourself what has the Queensland Beattie Government done for the sugar industry? Practically nothing. Except for failed loans schemes and recent promises of project funding - all amount to less than half a million dollars and we still haven’t seen the bulk of this money. This is a disgrace.

I note that the Beattie Government recently announced that it would “stand shoulder to shoulder with local councils to protect Sunshine Coast cane lands from inappropriate and ad hoc urban development” in the wake of the Mill’s closure. I urge the Beattie Government to also work with all those individuals and families who have been affected by the closure of Moreton Mill in exploring all possible options for the future.

Social Welfare: Disability Support Pension

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.01 p.m.)—Yesterday Senator McLucas asked me about carer allowance with regard to a particular disability. This is a supplementary payment for people who provide daily care and attention at home for an adult or a child with a disability or medical condition. The current assessment process in respect of children under 16 years of age was introduced on 1 July 1998. It replaced a complex and subjective assessment process that recognised only the need for additional care and attention and often resulted in different outcomes for similar cases.

There are currently two stages for assessing the child care receiver. Firstly, the child is assessed against the list of recognised disabilities that permit automatic entry to the program. The list of recognised disabilities contains disabilities and conditions which are consistently severe enough to qualify the parent or carer for the allowance. Lamellar Ichthyosis is not currently on the list of recognised disabilities. Where a child’s disability or medical condition is not on the list, they are assessed using the child disability assessment tool. The child disability assessment tool measures the level of severity of a disability by looking at whether the child functions according to the standards appropriate for their age.

The list of recognised disabilities and the child disability assessment tool were evaluated in 1999-2000. A group of specialists in childhood disability from a range of medical and allied health professional backgrounds found that the new assessment arrangements had been successful, and it did not recommend any changes to the list of recognised disabilities. The evaluation recommended, however, that the list of recognised disabilities be regularly reviewed. Such a review will be completed as soon as possible. Submissions to the review were invited through advertisements in the national newspapers on 8 November 2003, and submissions are due by 5 December 2003. Lamellar Ichthyosis is listed to be considered by the review on the list of recognised disabilities.

DEPARTMENT OF THE TREASURY

Return to Order

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (3.03 p.m.)—by leave—I wish to respond to an order of the Senate made on Monday, 1 December following a notice of motion moved by Senator Conroy. The Senate has requested:

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

the operation of the First Home Owner Grant scheme;

information on the impact of ‘bracket creep’; and

baseline information used in the preparation of the Intergenerational Report 2003-03 (Budget Paper No. 5).

Clearly, the order casts a very broad net for a range of documents. I note also that the Senate order encompasses and, in fact, appears to go beyond documents requested from the Department of the Treasury by the Australian newspaper in a current application under the Freedom of Information Act 1982 which, as I understand it, is currently before the Administrative Appeals Tribunal.

As to the breadth of the request itself, I note that there are no time frames attached to the first two parts of the request—that is, the request for documents in relation to the operation of the first home owners grant and documents in relation to the information on the impact of bracket creep. On the face of it, the Senate is requesting all documents. I understand that, without any time limitations, this alone has the potential to be an extremely onerous search. For example, whilst the recent First Home Owners Scheme has been in operation since 2000 and some documents may go back some three years, Labor itself when in government introduced a similar scheme in the 1980s for which documents may also exist—albeit, presumably, in archives.

In addition, as senators would know, bracket creep is a phenomenon that has been in existence for as long as we have had progressive income tax scales and rising wages. The request for documents relating to bracket creep will potentially encompass documents spanning decades. Another point I make is that the requests relate to ‘any documents’ in relation to these things, which is very wide indeed and may include things often as difficult to track down as emails, statistics and data, to name just a few categories.

The request in part (c) or the order for ‘baseline information used in the preparation of the Intergenerational Report’ is somewhat imprecise, and it is difficult to know what is actually being sought. I will instruct Treasury officers to interpret it in such a way as to be as responsive as we possibly can in interpreting this order. We will do our very best to understand the request, but I put on record the overall imprecise nature of the order. On the face of it, it makes the task somewhat difficult, because you obviously have to exercise choices and make interpretations.

I have asked the department for early advice concerning the feasibility of how to comply with this order. When this advice is received, I will be able to consider what would be a reasonable and appropriate response. I am quite certain the Senate has not intended to place a totally unreasonable request either on my shoulders or on the shoulders of Treasury. Issues of the use of public resources may be relevant to my future consideration of this order, but I will report back to the Senate and raise that issue at the appropriate time.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Aviation: Air Safety

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

That the Senate take note of the answers given by the Minister for Local Government, Territories and Roads (Senator Ian Campbell) to questions without notice asked by Senators O’Brien and Mackay today relating to the new airspace management system.
On Monday in this chamber, Senator Ian Campbell, in relation to the new national airspace management system, said:

The government has shown caution throughout the process of reform to ensure that every stage of implementation of the reform is done with the fundamental requirement of air traveller safety at its core.

He went on to say:

We will not, as a government, allow that to be compromised.

That is a very bold statement by Senator Campbell. The investigation into yesterday’s near collision between a Virgin Blue 737 and a light aircraft in the skies of Melbourne represents a significant and early test of the strength of the commitment given to the Senate by Senator Campbell on behalf of his senior minister, Mr Anderson. The incident is a very serious matter, and one which must be thoroughly and quickly investigated. The minister must ensure that the Australian Transport Safety Bureau has a free hand to fully determine whether the implementation of the national airspace system has led to a near disaster.

In relation to the national airspace system, Senator Campbell has a habit of making bold statements on behalf of the government and, more particularly, Mr Anderson. On Monday, when he was asked by Senator Mackay whether Mr Anderson would take personal responsibility for each additional incident caused by the new airspace management system, Senator Campbell said:

... last week we saw the minister— that is, Mr Anderson— going out to the nearest airport to his office, standing up on the tarmac and taking personal responsibility.

Senator Campbell reinforced the point later the same day when he said:

... he has convinced himself that it is safe and he has ... already taken some personal responsibility in that regard ...

When this incident is investigated, we will see how much responsibility Mr Anderson is prepared to take. He does not appear to have embraced his personal responsibility for the bungled implementation of the national airspace system to date. He has failed to take responsibility, and that meant that, just 16 days before the NAS was to take effect, pilots across the country failed to receive their training material. He failed to take responsibility for the bungle that led to the release of aviation maps which were missing vital radio frequency information.

Senator Colbeck—That’s not true.

Senator O’BRIEN—That is true. If any investigation proves that the NAS did contribute to the near disaster yesterday in the skies of Melbourne, I am not expecting to see Mr Anderson rushing to claim responsibility for that incident, either. Mr Anderson has arrogantly dismissed industry fears about the NAS during its development and implementation. He convened an aviation industry roundtable recently to discuss the national airspace system, yet he explicitly excluded key aviation safety associations and operators that have publicly expressed concerns about the new system.

The minister will open the door to some but will not sit down with critics of the national airspace system and attempt to work on an airspace system that has the agreement of all the industry and the safety of the travelling public at its core. The minister has failed to listen to claims that the national airspace system will reduce safety. He has not responded to claims that the purported cost savings from the national airspace system are unfounded and that the system may actually cost more. Given the arrogance with
which he has set about developing the national airspace system, Labor will work to ensure that Mr Anderson does take responsibility for it.

This government, particularly Mr Anderson, has a duty of care to the Australian people—that is, a duty of care to ensure that the safety of Australia’s travelling public is not diminished by the bungled introduction, I might say, of the national airspace system. The government must err on the side of caution in relation to the national airspace system. The risks are too great to do anything else. If this government has any doubts or suspicions that the implementation of the national airspace system contributed to yesterday’s near miss, it must immediately suspend the rollout of this national airspace system.

Senator COLBECK (Tasmania)  (3.11 p.m.)—There is no question that the national airspace system that was implemented on 27 November has been assessed as being safe. It has been assessed as being safe by Australia’s internationally recognised and respected Civil Aviation Safety Authority and by Airservices Australia. They have independently assessed and checked that the system that has been put into place is in fact a safe system. The further demonstration that this system is safe is its safe operation in the United States of America.

Senators opposite have mentioned the issue of radar coverage in the United States. In the United States, as in Australia, there is radar coverage where there are high levels of air traffic. There is a correlation between the United States and Australia with respect to density of air traffic and radar coverage. There is absolutely no question about that. There are clear examples and clear correlations that can be drawn between individual sites for airports in Australia and in the United States. Those correlations have been drawn, checked and looked at as part of the assessment process that has been undertaken with respect to the implementation of this system.

The system was subjected to considerable and lengthy safety hazard analysis identification procedures which included the involvement of sectors of the industry. Airlines, pilots, air traffic controllers and the Air Force were brought in to be a part of the hazard analysis for implementation of this system. All the bodies who are involved in the industry and who provide services to the industry assessed this system as being safe.

One of the most concerning issues about this whole debate has been the misinformation that has been peddled by those who seek to oppose the system. They have, for some unknown reasons, put out concerns that, quite frankly, are just not true. Senator O’Brien has just mentioned vital radio information being left off maps. That is not true. There is a change to the air system in Australia that encourages pilots to monitor the radio frequencies in the locations in which they are flying. To leave the maps the same indicates that we are looking for no change in the system. We are looking for pilots to monitor the frequencies in the regions in which they are flying so that they get the best possible information with respect to the conditions around them. That is the purpose of the change on the maps.

Senator O’ Brien makes no mention of that and in fact he extensively questioned the department with respect to this at estimates. Perhaps he ought to go back and read through the transcripts of the estimates, which quite clearly explained the reason for that. There was a change in the system, and we are encouraging pilots to monitor the frequencies close to where they are operating.

There were claims that the sporting pilots had not received the information. The im-
plementation group had worked with the sporting pilots bodies to find the best way to get the information out to them, and the best way that they determined in conjunction with the sporting pilots association was to put it out through their manuals and the documents that went out with the magazines. That was done well in advance of any of the other bodies.

There was a claim that the regional airlines did not receive their training packages. In fact the regional airlines participated in the development of the training packages. The misinformation that has gone on surrounding this particular issue is an absolute disgrace. I cannot understand why people would try to put fear into the travelling public when it is absolutely not warranted. This system quite rightly should be scrutinised properly. There is no question about that. For public safety purposes it is extremely important that this be done in a serious manner. But the scare tactics and the misinformation that has been put out with respect to the system are an absolute disgrace. Training material was sent out to over 30,000 pilots, to airlines and to flying schools. There is a website, which is extremely comprehensive, and a 1800 number is available to pilots around the country to call for any information that they would like to get hold of. (Time expired)

Senator MACKAY (Tasmania) (3.16 p.m.)—We awoke this morning to the news that there had been yet another incident—and I refer, of course, to Virgin flight DJ980 which was carrying over 100 passengers and which reportedly came within 20 seconds of colliding with a twin-engine Cessna. Senator Campbell told us today in question time that we must wait for the ATSB report into this incident before deciding what action should be taken. However, he was also unable to guarantee that the NAS had not played a role in this near hit. In the absence of such a guarantee, or the government’s incapacity for whatever reason to give such a guarantee, the minister and the government have to act now.

We cannot wait one day or two days or a week or for however long this report is going to take—and I must say that I was interested in the fact that the representing minister did not indicate when this report would be made available. People are flying now. They are in the skies as I speak and they will be flying tomorrow and the next day and the next day after that, increasingly as we come into Christmas, as everybody knows. If the government cannot guarantee that the changes that have been implemented are not behind or related to this latest incident then I believe, and the Labor Party believes, that the suspension of the implementation must occur now just in case there is a correlation, just in case there is a connection between the incident and the new airspace system.

As Senator O’Brien indicated, in a response to a question I asked last week Minister Anderson said that he had taken personal responsibility—and I will not read out that quote again. That is good. If the minister is prepared to take responsibility then he must, and the government must, stop hiding behind CASA. If he is prepared to take personal responsibility, he has to take action personally. The minister needs to live up to this undertaking, take that responsibility, suspend the system, and implement an urgent review just in case there is a correlation, just in case the incident that happened yesterday had anything to do with the new NAS.

This minister did not listen. You cannot have it both ways. You cannot say you will only act on the advice of the experts and then ignore the concerns of the many experts that have expressed deep concern with respect to
this new system. Do not ask us; ask the domestic and international pilots, the air traffic controllers, airport operators, emergency medical services helicopter operators, fixed wing aeromedical organisations, regional airlines and charter and flying training organisations. But the minister will not listen.

If in doubt—and I noticed that both Minister Anderson and Minister Campbell came back to it again—try to turn the whole issue into a union bash. Minister Anderson told the House earlier this week that the voicing of their fears by these professional organisations has ‘all the hallmarks of a union campaign’, and he therefore dismissed them. I noticed that Minister Anderson talked about it again today, and Minister Campbell attempted to say something—I am not quite sure what it was about—about the background of senators on this side, which has nothing to do with this issue. I found it a bit offensive given the seriousness of this issue and given the fact that a hundred people were on that Virgin flight yesterday.

This issue, as Senator Colbeck knows, is of vital concern to our home state of Tasmania. We do not have radar, as Senator Colbeck knows. On 25 November the Minister for Transport and Regional Services told the members in the House of Representatives:

The system that Australia is broadly moving to, it ought to be understood, is the North American system; that is what NAS stands for.

Senator Campbell at least had the good grace to indicate that there were major significant differences, and there certainly are significant differences. The US has 85 per cent radar coverage; we have 15 per cent radar coverage. Despite a suggestion to the contrary, it is not only the less populated areas of our country that do not have radar coverage. In my home state of Tasmania we have an entire state that does not have radar coverage.

The government has got to do something. (Time expired)

Senator McGauran (Victoria) (3.21 p.m.)—Mr Deputy President, it is a pleasure to have you in the chair to direct this debate on the taking note of answers. I am sure I will get many interjections along the way, which is typical of the opposition.

The DEPUTY PRESIDENT—Senator McGauran, you address the chair and do not worry about other people in the chamber.

Senator McGauran—I am addressing you, Mr Deputy President. That was the whole point of my opening. I am not stalling for time, I assure you. I rise to speak on what is a very serious issue. This government takes the safety of our skies extremely seriously—and what government would not? Wouldn’t even those in the opposition, if they ever had a chance to be in government, take it seriously? You would wonder by their questioning today whether they just wished to gain some sort of political advantage and fill in a day by throwing in alarm and worry over our airways. The Christmas period is the busiest flying period; it is when families crisscross the country. The opposition want to take advantage of this and throw alarm into our airways. They have not come in here with searching, inquiring or even intelligent questions regarding the introduction of the new system, which, by the way, Senator Mackay, is called the national airspace system. During the whole week they have come in and raised issues of incidents that have occurred in the air, trying to pin it on the minister and this new system. First of all, on Monday they came in direct from the union with information regarding 20 incidents that have occurred since the introduction of the NAS.

Senator Colbeck—Alleged.

Senator McGauran—Allegedly 20. It was found to be less than 20. In fact, there
were five incidents—so how wrong can you be?—among hundreds that occur throughout the year. Then you come in today and raise what is a serious matter that is to be inquired into, but you are not waiting for an inquiry. You do not even want the facts. You have just jumped on the occasion to politically attack the minister and to throw alarm and scare into our airways at the worst time of the year just to gain some cheap political advantage. Well, you do not. I do not think you will ever learn that as an opposition. Nevertheless, that does not deter you.

The Virgin aircraft incident that occurred is now going to be placed under investigation. But it has to be said that it is not uncommon—serious, but not uncommon. There were some 100 reported such incidents in the past 12 months. So even pre NAS we had such reported incidents. We will inquire into this, so why don’t you wait for the result of the inquiry? That is the most responsible thing to do. Wasn’t it your new leader that said on his election that he would not just be an opposition for opposition’s sake? What could be more cooperative or constitute a better opposition with regard to the safety of our airways than waiting for a report on a serious incident in our skies? But, no, you have jumped straight out of the blocks and attempted to cause alarm in our airways.

The truth of the matter is that this new National Airspace Scheme is being monitored step by step, day by day, and it is being introduced cautiously. It is not being introduced all at once; it is being introduced in stages over several years and it is being monitored accordingly. The Civil Aviation Safety Authority will not move from one stage to the next unless it is accepted as being safe. In fact they have made certain minor changes along the way between stage 1 and stage 2. Each of the characteristics is put through a hazard identification workshop attended by subject-matter experts from the industry. The government is very confident that CASA, as Australia’s regulator of aviation safety, has the expertise and the resources to rigorously analyse every facet of the NAS and its safety. CASA has already driven a number of changes to the training and educational material associated with stage 2. (Time expired)

Senator STEPHENS (New South Wales) (3.26 p.m.)—I rise to take note of the answers to the questions about the national airspace system and its implementation. I note that Senator McGauran and Senator Colbeck have once again come to the government’s defence. I remind Senator McGauran that we talked about this on Monday. Nobody wants to say, ‘We told you so,’ but certainly the events of last night are concerning to all travelling passengers and to the members on this side of the house. We have a seriously confused situation here. Like everyone else, I was very concerned when I woke this morning to hear what had happened.

The reports that we heard this morning were that the planes were within 20 seconds of crashing into the light plane north-west of Melbourne and that the Cessna requested an alternative operating instruction, which is not required under the new rules. The Cessna was in fact sandwiched between the 737 and an air ambulance. This is something that is of concern to all of us. We called on Monday for the system to be subject to a review. We are calling again for that to happen.

As Senator McGauran reminded us, we are all about to set out on our holiday travels, crisscrossing the country, and yet what we have is concern about the safety of all of our air flights and not much confidence that what we have here in the new NAS is going to work. We have the government playing down
the aviation scare, with Airservices Australia saying that this is only the ninth investigation of an incident. Yet we are hearing that there are many more reports of incidents, including the one near Tamworth I mentioned on Monday, and the triggering of the collision avoidance system on a Rex passenger aircraft taking off from Canberra last week. We are sure that some amendments and adjustments need to be made to this system. Nobody wants to take political points on the circumstances of a near fatal accident. As Senator McGauran said on Monday, we should all be deadly serious about this issue—and indeed we are.

Senator Colbeck—Well, get serious.

Senator STEPHENS—If we were serious about it, then we should be thinking about what we are asking pilots to do. We have a new system in place. We are now using ‘see and avoid’ mechanisms. I am not too sure what happens if you do not see—you certainly cannot avoid. We have pilots being asked to slow down their planes, to turn on their seatbelt signs sooner, to carry out their approach procedures earlier and to issue radio warnings similar to those used in Third World countries. Pilots’ unions and many concerned pilots want the new system to include the mandatory use of radios by light aircraft in class E airspace. We have calls for the inclusion of radio frequencies and airspace boundaries on the new airspace maps. We have calls for changes to class C airspace steps to cater for commercial aircraft descent profiles. So there are some reasonable requests being made by the industry for amendments to this whole process. We have international associations representing pilots and air traffic controllers saying that the changes downgrade safety. They say that Australia is moving from a safe system of air traffic separation to a system where the responsibility has moved from the professional air traffic controllers to amateur and recreational pilots. Surely that is not the kind of system we want to run in Australia. We want to be able to support a safe air system wherever we are.

Question agreed to.

PERSONAL EXPLANATIONS

Senator MACKAY (Tasmania) (3.31 p.m.)—Mr Deputy President, I wish to make a personal explanation.

The DEPUTY PRESIDENT—Do you claim to have been misrepresented?

Senator MACKAY—I do, Mr Deputy President.

The DEPUTY PRESIDENT—You may proceed.

Senator MACKAY—During the previous debate, taking note of answers, Senator Colbeck hurtfully lampooned me, I am afraid. He implied that it was my belief that the initials of the ‘National Airspace System’ actually stood for the ‘North American System’. I would like to draw the Senate’s attention to the following quote:

Technology has moved on enormously since then, as has best practice internationally. The system that Australia is broadly moving to, it ought to be understood, is the North American system; that is what NAS stands for.

Mr John Anderson—House of Representatives, 25 November this year.

DEFENCE LEGISLATION AMENDMENT BILL 2003

Consideration of House of Representatives Message

Consideration resumed.

The CHAIRMAN—The committee is considering message No. 473 from the House of Representatives and the motion moved by the minister that the Committee does not insist on the Senate amendments disagreed to by the House of Representatives. The question was put during the period of non-controversial legislation and so a di-
vision was not able to be taken. A division was called for and the division was deferred by way of motion by the duty minister until after the take note of answers debate. Therefore, I will now put the call for the division and require the bells to be rung for four minutes.

Question put:
That the motion (Senator Troeth's) be agreed to.

The committee divided.  [3.38 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes.......... 41
Noses.......... 9
Majority........ 32

AYES
Abetz, E. Barnett, G.
Bishop, T.M. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Conroy, S.M.
Coonan, H.L. Crossin, P.M.
Denman, K.J. Eggleston, A.
Ferguson, A.B. Ferris, J.M.*
Forshaw, M.G. Harradine, B.
Heffernan, W. Hill, R.M.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. Marshall, G.
Mason, B.J. McClellan, J.E.
Payne, M.A. Ray, R.F.
Scullion, N.G. Stephens, U.
Troeth, J.M. Vannstone, A.E.
Watson, J.O.W. Webber, R.
Wong, P.

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

* denotes teller

Question agreed to.

Senator MURRAY (Western Australia) (3.44 p.m.)—Mr Deputy President, I was about 10 metres away when the doors closed on the vote. I wonder if, by leave, my vote could be recorded with those of my colleagues.

The DEPUTY PRESIDENT—It cannot be recorded, but the intent of what you wanted to do may well be recorded in the Hansard. There being no objection, it is so ordered.

Resolution reported; report adopted.

LEGISLATIVE INSTRUMENTS BILL 2003
Consideration of House of Representatives Message

Consideration resumed.

The CHAIRMAN—The committee is considering the motion moved by the minister that the committee does not insist on the Senate amendment disagreed to by the House of Representatives. This is a division which comes about from an earlier vote which was taken in the Senate. There being no objection, I require the bells to be rung for one minute for the division.

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

The committee divided.  [3.44 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes.......... 42
Noses.......... 10
Majority........ 32

AYES
Abetz, E. Barnett, G.
Bishop, T.M. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.

NOES
Allison, L.F. * Bartlett, A.J.J.
Brown, B.J. Cherry, J.C.
Greig, B. Lees, M.H.
Nettle, K. Ridgeway, A.D.
Stott Despoja, N.
Chapman, H.G.P.   Colbeck, R.
Collins, J.M.A.   Conroy, S.M.
Cooman, H.L.   Crossin, P.M.
Dennan, K.I.   Eggleston, A.
Ferguson, A.B.   Ferris, J.M. *
Forshaw, M.G.   Harradine, B.
Hill, R.M.   Hogg, J.J.
Humphries, G.   Hutchins, S.P.
Johnston, D.   Kirk, L.
Ludwig, J.W.   Lundy, K.A.
Mackay, S.M.   Marshall, G.
Mason, B.J.   McLucas, J.E.
O’Brien, K.W.K.   Payne, M.A.
Ray, R.F.   Scullion, N.G.
Stephens, U.   Troeth, J.M.
Vanstone, A.E.   Watson, J.O.W.
Webber, R.   Wong, P.

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

* denotes teller

Question agreed to.

Resolution reported; report adopted.

COMMITTEES

Reports: Government Responses

The DEPUTY PRESIDENT—On behalf of the President and in accordance with the usual practice, I table a report of parliamentary committee reports to which the government has not responded within the prescribed period. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in Hansard.

The list read as follows—

PRESIDENT’S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS

AS AT 4 DECEMBER 2003

PREFACE
This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the then Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the then incoming government. The then Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the then government advised that responses to committee reports would be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The current government in June 1996 affirmed its commitment to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators’ Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and
subsequently tabled by the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of the tabling of a report. The committee monitors the provision of such responses.

An entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response.

Legislation and other committees report on bills and the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by legislation committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

**A guide to the legend used in the ‘Date response presented/made to the Senate’ column**

* See document tabled in the Senate on 3 December 2003, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 26 June 2003, for Government interim/final response.

** Report contains administrative recommendations only—response is to be provided direct to the committee in the form of an executive minute.

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| The value of water: Inquiry into Australia’s urban water management | 5.12.02 *(interim) | No |
| Regulating the Ranger, Jabiluka, Beverley and Honeymoon uranium mines | 14.10.03 | Time not expired |
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| Finance and Public Administration References  
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</table>
The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following reports of the Auditor-General:

Report No. 16 of 2003-04—Performance Audit—Administration of consular services: Department of Foreign Affairs and Trade—Follow-up Audit.


Tabling

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.49 p.m.)—I table four government documents which are listed at item 13(b) on today’s Order of Business, as well as a paper produced by the Director of Trials entitled A concept to support capability management and accountability through test and evaluation.

The list read as follows—

Department of Defence—Schedule of special purpose flights for the period January to June 2003

Department of Finance and Administration—Parliamentarians’ travel paid by the Department of Finance and Administration for the period January to June 2003

Department of Finance and Administration—Former parliamentarians’ travel paid by the Department of Finance and Administration for the period January to June 2003

Department of the Prime Minister and Cabinet—Expenditure on travel by former Governors-General paid by the Department of the Prime Minister and Cabinet for the period 1 January to 30 June 2003

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following reports of the Auditor-General:

Report No. 16 of 2003-04—Performance Audit—Administration of consular services: Department of Foreign Affairs and Trade—Follow-up Audit.


Tabling

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.50 p.m.)—by leave—I have a short statement to make in response to a Senate order of 2 December 2003 to produce documents arising from a motion moved by Senator Nettle. This statement is made on behalf of the Hon. Mark Vaile, the Minister for Trade.

The order relates to an audit report conducted by Graham A. Brown and Associates on the environmental and social impact of the Sepon mine in Laos. As the minister informed the Senate on 25 November this year, this audit report was prepared by an independent consultant for a private company, Oxiana Resources NL, now Oxiana Ltd. The information contained in this report, which in its entirety relates to the environmental and social impact of the project, is of an inherently commercial nature. It was provided to the Export Finance and Insurance Corporation in accordance with the company’s contractual reporting obligations.

The public release of this report, conducted for a private company, would severely undermine confidence among EFIC’s clients in its ability to retain the confidentiality of commercially sensitive information. As such, the minister stands by his original decision conveyed to the Senate on 25 November 2003 to claim public interest immunity against the release of the report. I note, however, that detailed information on the environmental and social assessment of the mine is readily available on the web sites of both EFIC and Oxiana, including EFIC’s detailed response to the issues raised in the extensive public consultation process.
Senator BROWN (Tasmania) (3.51 p.m.)—by leave—I made the comment, when the minister refused to furnish this report to Senator Nettle last time, that there must be a narrow interpretation taken on what is business in confidence or what are matters of a commercial nature that the Senate cannot see in circumstances where a government instrumentality is involved in fostering the interests of a company in Laos. We all know that Laos is one of the poorer countries in our region and that it has endemic corruption. We also know that mining operations in a country like that are very often against the wishes of local people and infringe on the environment. They are not only potentially socially unhelpful but also quite socially devastating. If you consider the itinerant workers brought into a mining camp in a previously rural village area, you get an idea of what is meant by that.

The Minister for Trade is saying he will not give the report to Senator Nettle, and therefore to the Senate, because it is all commercial in confidence, even though these environmental and social impacts result from a mine that is being fostered by the Australian government. The only thing I can read into that is that the failure to present the report being sought here, which is about the impact of the mine on the environment, the local people and indeed the whole population of Laos, is an indictment of the whole process and an indictment of the government’s involvement in this mine. It cannot be left by the Senate that a minister can say that an environmental and social report can be totally withheld from the Senate because the entirety of it is of a commercial in confidence nature. That defies logic. It is just not true.

I said before that the Greens are not going to allow this to simply go through to the keeper. Otherwise, every piece of assistance given to Australian or other companies overseas can be in total secrecy and show disregard for the environmental and social impact on other people who have no powers whatsoever. We have the power in this place and we should be ensuring that, where taxpayers’ money is assisting mining corporations or other so-called developers in poor countries, it be done ethically. If we do not insist on ethics in this parliament, we become part of the problem. The ethical issue of this is that the disclosure that Senator Nettle has sought should be here on the table for the whole of the Senate. This government is hiding something here. This government is manifestly hiding something rotten in what is going on here. Otherwise an environmental impact statement would be on the table, as would the social impact statement.

We will be investigating what measures we can take next on this matter. The minister thinks we are simply going to sit back and say: ‘Oh well. You have your secrecy. You refuse to give the Senate the information.’ The Senate required this information, not Senator Nettle of herself. It was a motion of this Senate that said to the government, ‘Give us this information.’ It is totally unacceptable—it is an affront to the Senate—that the government is obfuscating in this fashion. We will have to look at what measures can now be taken to ensure the government does the right thing. I will be doing that with Senator Nettle. And I do not mean next year, the year after or some time into the future; I mean now. This is totally unacceptable behaviour by the government and it cannot be allowed to simply get away with it as if this does not matter. It does matter; it is very important. We will be pursuing whatever measures we can to make the government do the right thing.
HEALTH: PHARMACEUTICAL BENEFITS SCHEME

Return to Order

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.56 p.m.)—by leave—I would like to make a statement on behalf of the Minister for Health and Ageing, the Hon. Tony Abbott, as follows:

The order arises from a motion moved by Senator Nettle shortly after 4 p.m. on 3 December. The order requires the minister to table certain documents by 3 p.m. today, 4 December. I wish to inform the Senate that I am unable to respond to the order in the very short time frame given. The order requires the tabling of many categories of documents, being documents originating from myself, my department, government advisory bodies, the National Prescribing Service, the Therapeutic Goods Administration and several pharmaceutical companies. The documentation relates to several health programs. I expect that there will be a great deal of material that would be regarded as commercial in confidence by the pharmaceutical companies concerned and they would need to be consulted. The volume of documentation involved and its complexity has meant that I have been unable to respond to the order within the time frame given.

Senator BROWN (Tasmania) (3.57 p.m.)—by leave—It would help greatly if the Senator Vanstone could indicate what time reference she is seeking for a response on that rather than leaving it in the air like that.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.57 p.m.)—by leave—I do not have information from the minister in relation to that. Clearly, a request yesterday for the documents to be delivered today was not possible. I have no reason to assume anything other than that the minister is doing his utmost to comply as quickly as he can.

Senator BROWN (Tasmania) (3.58 p.m.)—by leave—We are rising either tonight or tomorrow. I take it from what the minister says that the information will not be available in that time. However, I would expect that it is not going to take the six weeks until we come back to get this information. It would be good if Senator Vanstone would find out from the Minister for Health and Ageing and report back to the Senate before we do rise whether this information will be generally made available before Christmas.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.58 p.m.)—by leave—I will put Senator Brown’s request to the minister. I cannot indicate what the minister’s response will be.

TURNBULL PORTER NOVELLI

Return to Order

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.58 p.m.)—by leave—I table additional information relating to a Senate order to produce documents. The order arises from a motion moved by Senator Brown and agreed to by the Senate on 25 June 2003 and relates to work undertaken by the public relations company Turnbull Porter Novelli. As I understand it, this file was apparently overlooked when compiling the original return to order and is now available.

COMMITTEES

Treaties Committee

Report

Senator KIRK (South Australia) (3.59 p.m.)—On behalf of the Joint Standing
Committee on Treaties, I present the 57th report entitled Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Security (ISPS) Code, together with the Hansard record and minutes of proceedings. I seek leave to move a motion in relation to the report.

Leave granted.

Senator KIRK—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

The proposed Amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, including consideration and adoption of the International Ship and Port Facility Security Code were adopted by the International Maritime Organization in December last year. They are expected to be deemed to have been accepted by 1 January 2004, and will enter into force from 1 July 2004. This tight timeframe before Contracting Governments to the IMO, including Australia, become bound by the provisions of the amendments, has meant that many of the world’s shipping nations have faced enormous challenges in adapting their maritime operations and industries to become compliant with the new security measures.

According to the IMO, the measures adopted in December 2002 represent the culmination of just over a year’s intensive work by its Maritime Safety Committee and its Intersessional Working Group on Maritime Security since the terrorist atrocities in the United States in September 2001. While some of the amendments apply to safety measures, for example the identification of ships, it is the introduction of the International Ship and Port Facility Security (or ISPS) Code that has caused the greatest concern amongst maritime industry participants worldwide.

The Code is designed to establish a preventive security regime to enhance security on board ships and at ports. In part, it is intended to provide a standardised international framework for security-related risk evaluation and management in the maritime sector. The Code contains detailed requirements for governments, port authorities and shipping companies in Part A, which is mandatory, and Part B, which contains non-mandatory guidelines. As far as the Committee is aware, the USA is the only shipping nation to have agreed to be bound by Part B of the Code.

The Committee appreciates that because of the IMO-imposed timeframe, it was necessary for the legislation to be introduced prior to the conclusion of the Committee’s review. You may recall that this practice has been the subject of some criticism in recent reports of the Committee.

In this case however, the Committee has accepted the views of the Department of Transport and Regional Services that it is the imminent and unavoidable entry into force of these amendments that has been the impetus for rapid action on establishing Australia’s compliance under the SOLAS Convention.

The Committee was aware of serious concerns from many maritime industry participants at the outset of the inquiry about the manner in which the ISPS Code was to be implemented through legislation, including a perception of serious differences between the spirit and letter of the ISPS Code, and the legislation itself. Therefore the Bill has been the subject of some of the Committee’s deliberations in this Report.

In considering this proposed treaty action, the Committee conducted public hearings as well as inspections of the ports of Fremantle and Newcastle, to see first-hand how the amendments to SOLAS and the introduction of the ISPS Code would affect the management of ports in those areas. The Committee found both those inspections extremely valuable in gaining practical knowledge of security applications in ports and port facilities.

Some of the concerns raised with the Committee included the strong perception that the legislation had not been developed specifically for the maritime industry, that the terminology used was ambiguous, and that some concepts under between the Code and the legislation were ill-defined, including the role of the harbourmaster and the Secretary of the Department of Transport in issu-
ing directions to ships in the event of a security incident.

The Committee is not alone in recognising the difficulties in communication between the parties that arose as a result of legislation being introduced in advance of regulations which would ensure its operability. The Committee considered that many of the concerns raised by organisations who prepared submissions to the inquiry were resolved by the conclusion of the inquiry, when the legislation and regulations had been negotiated and concluded. The Committee notes that the amended Bill passed through both Houses of the Parliament this week, and was awaiting royal assent when the Committee considered and adopted this Report on Tuesday evening. The Committee trusts that most maritime industry participants who were involved in this inquiry process will be satisfied with the final outcomes.

Given that the introduction of these increased security measures, through the ISPS Code and the legislation, has been conducted in a somewhat compressed manner, the Committee is very interested to see whether the assurances of the Department about the future operation of Australian ports resulting from this treaty action are going to be guaranteed. The Committee has therefore recommended that a post-implementation review of the Maritime Transport Security Act 2003 be conducted, so that operational concerns with regard to the Act or its regulations can be raised by interested parties, with a view to improving the legislative provisions if required.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee

Statement

Senator McGauran (Victoria) (4.00 p.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I seek leave to incorporate in Hansard a statement on the progress of the committee’s inquiry into the application and expenditure of funds by Australian Wool Innovation Pty Ltd. Leave granted.

The statement read as follows—

The inquiry of the Senate Rural and Regional Affairs and Transport Legislation Committee into aspects of the management of Australian Wool Innovation Pty Ltd, and expenditure of funds under the Statutory Funding agreement, has been and continues to be of considerable interest in the woolgrowing community, and in the research and innovation community linked to the wool industry.

The committee commenced this inquiry in late June after considering evidence from officials of the Department of Agriculture, Fisheries and Forestry Australia (AFFA) at its 2003-04 budget estimates hearings in May.

The committee decided to inquire into a number of apparently serious problems with administration and expenditure of moneys under the Statutory Funding Agreement between the Commonwealth and AWI in calendar years 2001-02.

The committee has taken a large amount of complex evidence, involving a large volume of documentary evidence, from the major participants in the expenditure and administrative activity and decisions in question.

These included past and present officeholders in AWI, senior officials of AFFA and representatives of the woolgrowing industry.

The committee is in the process of completing a difficult and complex report on the issues of public administration and accountability for the expenditure of producer levy funds.

During the course of the inquiry the committee has heard evidence of alleged breaches of the Statutory Funding Agreement by the former administration of AWI including allegations related to the personal use of the corporate credit card by the former Managing Director of AWI, Mr Colin Dorber, and the payment of Directors’ fees to Mr Dorber as a Director of ShearExpress.

The committee has also heard conflicting evidence from Mr Dorber and the Department of Agriculture, Fisheries and Forestry, and AWI’s auditors PricewaterhouseCoopers, in relation to these and other matters.
Furthermore, the committee has heard allegations of very serious failings by the former administration of AWI to adhere to appropriate standards of corporate governance.

The committee had hoped to report to the Senate by the end of this sitting period, but due to the complexity of the matters involved, this has not been possible. The committee recognises the very serious nature of the matters raised during the inquiry, and endeavours to fully and completely address all of these issues in its report.

The committee anticipates presenting—and publishing—its final report on the matter before the end of the month.

**Membership**

The **DEPUTY PRESIDENT**—The President has received letters from party leaders seeking variations to the membership of committees.

**Senator VANSTONE (South Australia)—**Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assistanting the Prime Minister for Reconciliation) (4.01 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

- **Economics Legislation Committee**
  - Appointed—Substitute member: Senator Cherry to replace Senator Murray for the committee’s inquiry into the provisions of the Superannuation Safety Amendment Bill 2003
- **Foreign Affairs, Defence and Trade Legislation Committee**
  - Appointed—Substitute member: Senator Bishop to replace Senator Cook for the committee’s inquiry into the provisions of the Military Rehabilitation and Compensation Bill 2003 and a related bill
- **Legal and Constitutional References Committee**
  - Appointed—Senator Ludwig
  - Discharged—Senator Stephens.

Question agreed to.
that just because I put an amendment forward does not mean it is always the best, and therefore it is not necessarily signed off by the sector. My understanding is that a lot of the amendments that I am moving, and those that Senator Carr is moving, actually have in-principle sector support in many cases. I am glad to say that there will be a couple of amendments coming up that both I and the government are moving—in fact, identical amendments—that I presume will receive the majority support of the chamber and that clearly have strong support from the sector.

I am happy to have Democrat amendments (12) to (17) and (20) voted on now, as we agreed. The previous chair advised that Democrat amendments (18) and (19) should be put separately because the Labor Party, as I understand it, does not support those amendments. I think after that we go back to government amendment (17)—I am not sure if that is correct.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (4.06 p.m.)—I indicated to Senator Harradine, who is not here at the moment, that I would try and give a simple and non-inflamatory outline of why we would not be supporting some amendments. In relation to the ALP amendments (15) to (19), we say that the proposed amendment to replace reference to an ‘appropriate level of quality’ with reference to an ‘external system of normative peer review’ is a retrograde step. This would effectively take the AUQA out of the loop and would allow universities to benchmark themselves by comparisons with each other or some other standard, as they determined. There would be no national consistency or agreed standards. AUQA provides for national consistency and a uniform approach to audit.

Proposed amendments (19) to (26), in effect, will give the minister the power to override the independent external review processes that are required to be in place by the quality auditing body. AUQA currently has an independent review process. Prior to the audit panel recommending a final draft version of the report for publication, an institution is able to comment on a draft for identification of any errors of fact and to make comments on emphasis or expression. The report then goes from the audit panel to the board for clearance before publication.

Democrat amendments (19) to (20) relate to private providers. There will be a number of private providers where the minister should be able to impose conditions to ensure the quality of higher education provision. We do not support amendments (19) to (25). The provisions relate to auditing charges for private providers. The auditing body should set the charge, as is currently the case with AUQA.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that Democrat amendments (12) to (17) and (20) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that Democrat amendments (18) and (19) be agreed to.

Question negatived.

Senator CARR (Victoria) (4.10 p.m.)—I seek leave to move all opposition amendments on sheet 3209, barring (7), (29) and transitional (1), (34), (38) to (43), (50), (55) to (60), (62), (73) to (77) and (80).

Leave granted.

Senator CARR—I move:
(19) Clause 19-75, page 23 (line 16), after “any”, insert “significant”.

(20) Clause 19-75, page 23 (line 19), omit “may affect”, substitute “has affected”.

(21) Clause 19-80, page 24 (after line 8), at the end of the clause, add:

(4) A person authorised by the Secretary in accordance with subsection (3) may enter the premises of a provider at any time at the invitation or request of the provider for the purposes of complying with the invitation or request.

(5) Where a person seeks to enter the premises of a provider otherwise than in accordance with subsection (4), the person may do so only in compliance with written arrangements determined by the Secretary which must provide for obtaining from a magistrate a warrant granting access to specified premises and specified documents for a specified purpose.

(22) Clause 19-90, page 24 (line 16), omit “for each year”, substitute “for each *intake”.

(23) Clause 19-90, page 24 (line 22), omit “for each year”, substitute “for each *intake”.

(24) Clause 19-90, page 24 (after line 27), at the end of the clause, add:

(4) Once a student has commenced a course of study, a university/higher education institution must maintain the *student contribution amount and the *tuition fee at the same level as determined for that student’s intake year until the student is awarded a *higher education award, except that the fee may be increased annually by not more than the index number.

(26) Clause 30-1, page 34 (lines 11 to 14), omit subparagraph (1)(a)(ii).

(27) Clause 30-1, page 34 (lines 15 to 17), omit paragraph (1)(b).

(28) Clause 30-1, page 34 (lines 21 and 22), omit “higher education provider that is not a *Table A provider”, substitute “*Table B provider”.

(30) Clause 30-10, page 35 (lines 6 to 8), omit subclause (1), substitute:

(1) Before the commencement of each year, the Minister may allocate a specified *number of Commonwealth supported places to a university/listed higher education provider for an annually revised triennial allocation as follows:

(a) revising the allocation of places for the first and second years of the triennial period; and

(b) allocating places for the third year of the triennium.

(31) Clause 30-10, page 35 (after line 19), at the end of clause, add:

(5) In the performance of the functions of the Minister under this Part, the Minister shall allocate places consistent with:

(a) the expressed preferences of higher education providers; and

(b) the needs of the communities which each higher education provider serves; and

(c) the funding provided by the Commonwealth to a higher education provider in the previous period; and

(d) any increase in population; and

(e) any increase in the proportion of students completing high school; and

(f) any growth or contraction in the number of persons undertaking particular courses of study with a higher education provider or in the region in which the higher education provider is located; and

(g) the importance of maintaining higher education providers in regional areas;

and shall exercise those functions so as to promote the objects of this Act including in relation to universities, those of the objects which recognise...
the independence and autonomy of universities.

(32) Clause 30-15, page 36 (after line 2), at the end of the clause, add:

(3) A variation or deletion must not be made in accordance with subsection (2) so as to reduce the total funding under the Commonwealth Grant Scheme to the Victorian College of the Arts below the level of funding provided to the college in 2003 as increased annually by the indexation factor.

(33) Clause 30-15, page 36 (after line 2), at the end of the clause, add:

(4) A variation or deletion must not be made in accordance with subsection (2) so as to reduce the total funding under the Commonwealth Grant Scheme to the Australian Maritime College below the level of funding provided to the college in 2003 as increased annually by the indexation factor.

(35) Clause 30-25, page 36 (line 16) to page 37 (line 34), omit the clause, substitute:

30-25 Funding agreements

(1) The Secretary may, on behalf of the Commonwealth, enter into a funding agreement with a higher education provider relating to a grant under this Part in respect of a year (the grant year).

(2) Each institution shall provide to the Commonwealth a funding agreement in an approved form describing activities of the institution and may from time to time provide to the Minister variations of that funding agreement.

(3) An institution that has provided to the Minister a funding agreement under this section may at any time provide to the Minister a new funding agreement in an approved form in substitution for the previous educational profile or for the previous funding agreement as varied, as the case may be.

(4) The approved form of a funding agreement to be submitted by an institution under this section shall be determined by the Minister after consultation with the institution.

(36) Clause 30-25, page 36 (line 17), omit “Secretary may”, substitute “Minister shall”.

(37) Clause 30-25, page 37 (after line 34), at the end of the clause, add:

(4) An agreement entered into in accordance with this section must be tabled in each House of the Parliament within 15 sitting days of that House after the agreement is entered into.

(38) Page 54 (after line 21), at the end of the Division, add:

36-75 University/listed higher education provider to provide statement of general information

(1) A university/listed higher education institution must provide to the Minister such statistical and other information that the Minister by notice in writing requires form the institution regarding:

(a) the provision of higher education by the institution; and

(b) compliance by the institution with the requirements of this Act.

(2) The information must be provided:

(a) in a form approved by the Minister; and

(b) in accordance with such other requirements as determined by the Minister.

(45) Clause 36-40, page 51 (line 23), at the end of subclause (1), add:

; (iii) paid to the provider 80% of the student contribution amount for the unit.

(46) Page 54 (after line 21), at the end of Division 36, add:

36-75 Financial information must be provided
(1) A higher education provider must provide to the Minister a financial statement for each "annual financial reporting period for the provider in which:

(a) the provider receives assistance under this Chapter; or
(b) a student of the provider receives assistance under Chapter 3.

(2) The statement:

(a) must be in the form approved by the Minister; and
(b) must be provided together with a report on the statement by an independent *qualified auditor; and
(c) must be provided within 6 months after the end of the "annual financial reporting period for which the statement was given.

(3) An annual financial reporting period, for a higher education provider, is the period of 12 months:

(a) to which the provider’s accounts relate; and
(b) that is notified in writing to the Minister as the provider’s annual financial reporting period.

(4) Clause 41-20, page 57 (after line 32), at the end of the clause, add:

(2) The approval of a grant by the Minister under this Part is a disallowable instrument for the purposes of the Acts Interpretation Act 1901.

(5) Clause 41-25, page 58 (lines 2 to 15), omit “higher education provider” (twice occurring), substitute “body corporate listed in Schedule 2”.

(52) Clause 41-20, page 57 (after line 32), at the end of the clause, add:

(2) In the performance of the Minister’s function to impose conditions on grants and make grants under this Part, the Minister shall take into account the specific purpose of the grant and promote the objects of the Act including, in relation to universities, those of the objects that recognise the independence and autonomy of universities.

(53) Clause 41-25, page 58 (lines 2 to 15), omit “higher education provider” (twice occurring), substitute “body corporate listed in Schedule 2”.

(54) Division 54, page 66 (lines 2 to 31), omit “Secretary” (wherever occurring), substitute “Minister”.

(61) Clause 104-10, page 95 (line 30), after “study”, insert “at a Table C provider”.

(62) Clause 143-10, page 131 (line 10) to page 132 (line 10), omit the clause, substitute:

143-10 Working out a former indexed FEE-HELP/OS-HELP debt

A person’s former indexed FEE-HELP/OS-HELP debt, in relation to the person’s accumulated FEE-HELP/OS-HELP debt for a financial year to which this subsection applies, is worked out by multiplying:

(a) the person’s former unindexed FEE-HELP/OS-HELP debt in relation to the financial year; by

(b) the HELP debt indexation factor for 1 June in that financial year.

(64) Clause 154-10, page 140 (lines 19 to 23), omit the clause, substitute:

154-10 Minimum repayment income

The minimum repayment income for an "income year is:

(a) for the 2004-05 income year—$35,000; or
(b) for a later income year—that amount as indexed under section 154-25.
(65) Clause 154-20, page 141 (table item 1(a), 2nd column), omit “$35,607”, substitute “$40,607”.

(66) Clause 154-20, page 142 (table item 2(a), 2nd column), omit “$42,973”, substitute “$47,973”.

(67) Clause 154-20, page 142 (table item 3(a), 2nd column), omit “$45,233”, substitute “$50,233”.

(68) Clause 154-20, page 142 (table item 4(a), 2nd column), omit “$48,622”, substitute “$53,622”.

(69) Clause 154-20, page 142 (table item 5(a), 2nd column), omit “$52,658”, substitute “$57,658”.

(70) Clause 154-20, page 142 (table item 6(a), 2nd column), omit “$55,430”, substitute “$60,430”.

(71) Clause 154-20, page 142 (table item 7(a), 2nd column), omit “$60,972”, substitute “$65,972”.

(72) Clause 154-20, page 142 (table item 8(a), 2nd column), omit “$65,000”, substitute “$70,000”.

(78) Clause 238-10, page 195 (lines 23 to 29), omit clause (1), substitute:

1. The Minister may make Guidelines, specified in the second column of the table, that:
   (a) promote the objects of this Act; and
   (b) provide for matters that are:
      (i) required or permitted by the corresponding Chapter, Part or section specified in the third column of the table to be provided; or
      (ii) required or convenient to be provided in order to carry out or give effect to that Chapter, Part or section.

(79) Clause 238-10, page 196 (after line 2), at the end of the clause, add:

3. Guidelines under section 238-10 shall not take effect prior to the expiration of the 15 sitting days’ period referred to in subsection (4) of section 48 of the Acts Interpretation Act 1901.

(81) Schedule 1, page 202 (after line 14), after the definition of information system, insert:

intake means a cohort of students admitted to a course of study to commence in a specified study period.

Note: A study period includes a semester or a term

(82) Schedule 1, clause 1, page 203 (line 18), omit “as in force from time to time”, substitute “as in force on 1 January 2004”.

(83) Schedule 1, clause 1, page 205 (lines 13 to 17), omit paragraphs (c) and (d) of the definition of qualified auditor.

(85) Schedule 1, clause 1, page 208 (line 4), omit the definition of university, substitute:

university means a body corporate:
   (a) that meets *National Protocol 1; and
   (b) that is established as a university, or recognised as a university, by a law of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.

(86) Schedule 1, clause 1, page 208 (after line 4), after the definition of university, insert:

university/higher education institution means a university or other higher education institution listed as a *Table A or a *Table B institution.

(87) Page 208 (after line 20), at the end of the bill, add:

Schedule 2

Academy of the Social Sciences in Australia
Australian Academy of Science
Australian Academy of Technological Sciences and Engineering
Australian Academy of the Humanities
Australian Council for Education Research
Australian Universities Quality Agency
Commonwealth Study Conferences (Australia)
I move the amendments in this way because it has become transparently obvious to me that this government has undertaken an arrangement with the Independent senators whereby there will be no proper consideration of this bill. What there will be is a checklist of amendments which the government and the Independent senators will agree to. Those amendments will be voted for and all others will be voted against. This makes the process of legislative review a complete joke. It makes a complete sham of the processes that are being undertaken. Here we see the product of political wheeling and dealing whereby the universities of this country have been sold down the drain, whereby the students of this country have been sold down the drain, whereby a whole range of people associated with higher education have been sold down the drain and finally, in my judgment, whereby those that rely heavily upon the integrity, the quality and the capacity for excellence in higher education have been sold down the drain.

The vice-chancellors, or, more especially, a section of the vice-chancellors, have entered into a political arrangement with the government to deliver—bound and tied—the Independents of this Senate to produce a result which the government sees is in their short-term interest. The consequence of that is that the opportunity for serious legislative debate has been precluded. This morning we saw amendment after amendment rejected without debate. It is crystal clear what the political dynamic is here. This is a sleazy, smelly little deal, done under night, to get a proposition put through in the dying days—

in the dying hours—of this parliamentary session in such a way as to fundamentally undermine the policy integrity of even what the government was proposing.

Dr Nelson has effectively sold himself short, which I find absolutely amazing. So desperate is he to climb the ladder against Mr Abbott and to get a bill through this session of parliament that he is prepared to cave in on a whole range of matters. But the deal has to be: you tick the government amendments, you cross out any opposition amendment.

We have a situation where the politics of the relationship between a section of the Vice-Chancellors Committee and the government are now being dictated and delivered through the Independents in this chamber to produce a proposition which is essentially far short of what this sector is entitled to expect, what the students who are participants in that system would be entitled to expect and what the researchers would be entitled to expect. The capacity of our universities to contribute to the national economy and the national wellbeing has been seriously undermined as a result of these sweetheart arrangements. That is a tragedy, pure and simple.

Let us get it on the table and make sure that we are not in any way embarrassed about it. If people want to do deals they should, but they should come in here and tell us what the deals are. That is my complaint. They do not even have the decency to come in here before this Senate and explain what the deals are. Those that have made a lifetime commitment to debate and to higher education ought to feel ashamed by these arrangements. As a consequence, we are saying, ‘We move these amendments en bloc.’

Senator HARRIS (Queensland) (4.15 p.m.)—That is one of the most amazing outbursts that I have seen in the chamber. I
would like to convey, Chair, through you to Senator Carr that there is a range of reasons for One Nation having come to the decision it has in relation to certain amendments—not all of them. If need be, I could give the chamber some indication of the extent of the discussion that has gone into looking at the opposition’s amendments, looking at the government’s proposals, looking at those of the Democrats and the Greens, and then also taking into account any amendments that One Nation or the other three Independent senators would want to move. So it is not a case of saying carte blanche, ‘One Nation is not going to vote for anybody else’s amendments.’ The decisions that One Nation makes in relation to this legislation are based on a thoughtful assessment of the amendments that have been put on the table by everybody. It is on that basis that I reiterate what I said earlier this morning: One Nation will make its decision on this legislation based on its eventual outcome through the committee stage.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that the amendments moved by Senator Carr be agreed to.

Question negatived.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (4.18 p.m.)—I move government amendment (17) on sheet PA234:

(17) Clause 19-35, page 20 (line 1), after “procedures”, insert “that, in the provider’s view, are”.

Question agreed to.

The TEMPORARY CHAIRMAN—We now move to government amendments (18) and (19) on sheet PA234.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (4.19 p.m.)—Perhaps I could seek some advice from the chamber. The government would be happy to move in a block such amendments as the chamber is happy to deal with in a block, so I seek some advice in relation to that.

Senator Carr interjecting—

Senator VANSTONE—The government would be happy to move in a block such amendments as you would be happy to have dealt with in a block.

Senator CARR (Victoria) (4.19 p.m.)—We will be seeking to have divisions on a series of amendments. I have indicated the list of amendments on which we will be dividing. They are on issues relating to the Student Learning Entitlement—

Senator Vanstone interjecting—

Senator CARR—I will answer your question. They are on issues relating to the learning entitlement; the 20,000 places question; the no university to lose funding issue, which is amendment (34)—

The TEMPORARY CHAIRMAN—You are talking with respect to your amendments, not government amendments (18) and (19).
Senator CARR—I understand. I am making the point that we will be dividing on the various issues I have indicated.

The TEMPORARY CHAIRMAN—Senator Carr, as I understand it, the amendments that we are considering are government amendments (18) and (19) currently before the chair.

Senator CARR—My understanding is that the question to me went beyond amendments (18) and (19).

The TEMPORARY CHAIRMAN—that may be, informally, Senator Carr.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (4.20 p.m.)—by leave—Mr Temporary Chairman, to allow things to proceed while officers get together a list of amendments that might comply with what Senator Carr would be happy with, perhaps we could vote on government amendments (18) and (19). Therefore, I move government amendments (18) and (19) on sheet PA234:

(18) Clause 19-45, page 20 (line 26), omit “The”, substitute “Except where the provider is a
* Table A provider, the”.

(19) Clause 19-45, page 20 (line 29), after “procedure”, insert “referred to in paragraph (1)(e)”.

Question agreed to.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (4.21 p.m.)—Mr Chairman, after taking some advice, the government would be happy to move government amendments (20), (21), (22), (23), (24) and (25) on sheet PA234 in a block.

Senator STOTT DESPOJA (South Australia) (4.22 p.m.)—I would be happy for the government to move all of those, but I ask that I be able to move Democrat amendments (21) and (22) and that the government withdraw their amendments (21) and (22). Through you, Chair, to the minister I suggest that even a small win is better than nothing. I am happy for the minister to move all of those amendments, except government amendments (21) and (22), which are in fact identical to Australian Democrats amendments (21) and (22). How about the minister moves her other amendments and I move those?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (4.22 p.m.)—by leave—Senator Stott Despoja, I would be very happy to do that if I were really confident that when you went out and said, ‘We have had a win; we have amended the bill,’ you were going to add that you had amended the bill in the way the government was going to amend it anyway. Let us not be finicky. Yes, Senator, we will be happy to accept your amendments. I move government amendments (20), (23), (24), (25) and (27) on sheet PA234.

(20) Clause 19-70, page 23 (after line 12), at the end of the clause, add:

(3) A notice under this section must not require the giving of information that a higher education provider is required to give to the Minister under section 19-95.

(23) Clause 19-90, page 24 (lines 19 and 20), omit “, under its funding agreement under section 30-25 in respect of the year.”.

(24) Clause 19-95, page 25 (line 15), at the end of paragraph (2)(b), add “for a particular year by the date specified in the Higher Education Provider Guidelines in the year preceding that year”.

(25) Clause 19-105, page 26 (lines 4 to 9), omit paragraph (3)(d), substitute:
imposed in accordance with the Commonwealth Grant Scheme Guidelines for the imposition of fees in respect of overseas students; or

(27) Clause 27-5, page 33 (lines 13 to 21), omit the clause, substitute:

27-5 Guidelines

(1) The grants payable under this Part are also dealt with in the Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines.

(2) The provisions of this Part indicate:

(a) when a particular matter is, or may be, dealt with in the guidelines; and

(b) whether the matter is dealt with in the Commonwealth Grant Scheme Guidelines or the Tuition Fee Guidelines.

Note 1: The Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines are made by the Minister under section 238-10.

Note 2: The Commonwealth Grant Scheme Guidelines may also deal with matters arising under section 69-10.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (4.23 p.m.)—I move:

(21) Clause 19-75, page 23 (line 9), after “may” insert “significantly”.

The Democrats oppose clause 19-80 in the following terms:

(22) Clause 19-80, page 23 (line 22) to page 24 (line 8), TO BE OPPOSED.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that clause 19-80 stand as printed.

Question negatived.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (4.27 p.m.)—I have another suggestion to facilitate debate, but I will take advice in relation to this matter. The government will be happy to move as a block requests (28)-(30) and amendments (31), (32), (37), (38) and (41), (33), (34) and (63)-(79), (35), (36), (39), (40), (42)-(44), (45)-(48) and (49). These are all government amendments relating to the Commonwealth Grants Commission, and it might assist debate if the government moved them as a block. Perhaps Senator Carr can get some advice on that.

Senator Carr—I have done so.

Senator VANSTONE—by leave—I move requests (28)-(30), amendments (31), (32), (37), (38) and (41), (33), (34) and (63)-(79), (35), (36), (39), (40), (42)-(44), (45)-(48) and (49) on sheet PA234 Revised:

(28) Clause 30-5, page 34 (line 28), omit “$3,086,242,000”, substitute “$3,098,123,000”.

(29) Clause 30-5, page 34 (line 29), omit “$3,215,263,000”, substitute “$3,227,263,000”.

(30) Clause 30-5, page 34 (line 30), omit “$3,342,701,000”, substitute “$3,364,683,000”.

(31) Clause 30-10, page 35 (after line 10), after subclause (2), insert:

(2A) If the provider has indicated to the Minister its preferred distribution of those places, the Minister must have regard to that preferred distribution in deciding the distribution of those places.

(32) Clause 30-10, page 35 (line 14), at the end of subclause (3), add:

; and (c) the number of those places that have an enabling loading.

(37) Clause 30-25, page 37 (after line 22), after paragraph (3)(c), insert:
(ca) the maximum number of Commonwealth supported places provided by the provider which can have an enabling loading in the grant year; and

(38) Clause 30-25, page 37 (after line 25), after paragraph (3)(d), insert:

(da) the maximum amount of enabling loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant year; and

(41) Clause 33-5, page 39 (line 5), at the end of the clause, add:

; and (d) if the allocation has specified under paragraph 30-10(3)(c) a number of Commonwealth supported places that have an enabling loading—the amount of enabling loading worked out under the Commonwealth Grant Scheme Guidelines for those places.

(33) Clause 30-15, page 36 (lines 1 and 2), omit subclause (2).

(34) Clause 30-25, page 36 (line 17), omit “Secretary”, substitute “Minister”.

(63) Clause 54-1, page 66 (line 5), omit “Secretary”, substitute “Minister”.

(64) Clause 54-1, page 66 (line 10), omit “Secretary”, substitute “Minister”.

(65) Clause 54-1, page 66 (line 14), omit “Secretary”, substitute “Minister”.

(66) Clause 54-1, page 66 (line 16), omit “Secretary”, substitute “Minister”.

(67) Clause 54-5, page 66 (line 18), omit “Secretary”, substitute “Minister”.

(68) Clause 54-5, page 66 (line 20), omit “Secretary”, substitute “Minister”.

(69) Clause 57-1, page 67 (lines 5 to 10), omit “Secretary” (wherever occurring), substitute “Minister”.

(70) Clause 57-5, page 67 (lines 12 to 20), omit “Secretary” (wherever occurring), substitute “Minister”.

(71) Clause 60-1, page 68 (line 9), omit “Secretary”, substitute “Minister”.

(72) Clause 60-1, page 68 (line 7), omit “Secretary”, substitute “Minister”.

(73) Clause 60-1, page 68 (line 11), omit “Secretary”, substitute “Minister”.

(74) Clause 60-1, page 68 (line 14), omit “Secretary”, substitute “Minister”.

(75) Clause 60-1, page 68 (line 22), omit “Secretary”, substitute “Minister”.

(76) Clause 60-5, page 68 (line 25), omit “Secretary”, substitute “Minister”.

(77) Clause 60-5, page 68 (line 29), omit “Secretary”, substitute “Minister”.

(78) Clause 60-5, page 68 (line 37), omit “Secretary”, substitute “Minister”.

(79) Clause 60-10, page 69 (line 8), omit “Secretary’s”, substitute “Minister’s”.

(35) Clause 30-25, page 36 (after line 19), after subclause (1), insert:

(1A) In negotiating the agreement the Minister must have regard to all of the types of matters that the provider has indicated to the Minister it wishes to be specified in the agreement.

(36) Clause 30-25, page 37 (after line 5), after subclause (2), insert:

(2A) However, the agreement must not specify as a condition to which the grant is subject a matter in respect of which the Minister could have made a determination under subsection 36-15(2) (or could have made such a determination but for subsection 36-15(3)).

Note: The Minister has the power under subsection 36-15(2) to determine that students are not to be enrolled as Commonwealth supported students in particular courses. The determination is disallowable (see subsection 36-15(3)).

(39) Clause 30-25, page 37 (lines 26 to 31), omit paragraphs (3)(e) and (f).
(40) Clause 30-25, page 37 (after line 34), at the end of the clause, add:

(4) The Minister must cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the making of the agreement.

(42) Heading to subclause 33-25(1), page 41 (line 2), omit “105% of allocated places”, substitute “allocated places by 5% or higher agreed percentage”.

(43) Clause 33-25, page 41 (lines 13 to 16), omit paragraph (1)(b), substitute:

(b) in the preceding year, the number of Commonwealth supported places provided by the provider exceeds:

(i) 105% of the total number of Commonwealth supported places allocated to the provider for that year under section 30-10; or

(ii) the percentage of that total number that is the percentage specified for the purpose in the funding agreement entered into with the provider in respect of that year; whichever is higher.

(44) Clause 33-25, page 41 (lines 17 to 27), omit subclause (2), substitute:

(2) The adjustment under subsection (1) is an amount worked out using the formula:

\[
\text{Excess places} \times \frac{\text{Student contributions}}{\text{Places provided}}
\]

where:

excess places is the number of Commonwealth supported places that the provider provided during the preceding year in excess of:

(a) 105% of the total number of Commonwealth supported places allocated to the provider for that year under section 30-10; or

(b) the percentage of that total number that is the percentage specified for the purpose in the funding agreement entered into with the provider in respect of that year; whichever is higher.

places provided is the number of Commonwealth supported places that the provider provided during the preceding year.

student contributions is the sum of all of the student contribution amounts that the provider has received, or is entitled to receive, for all of the units of study undertaken with the provider during the preceding year.

(45) Heading to subclause 33-25(3), page 41 (line 28), omit the heading, substitute:

Corrected basic amount is less than the basic grant amount

(46) Clause 33-25, page 42 (lines 1 to 3), omit subparagraph (3)(a)(i), substitute:

(i) provide for an adjustment when the provider’s corrected basic amount for the preceding year is less than the provider’s basic grant amount for that year; nor

(47) Clause 33-25, page 42 (lines 6 and 7), omit paragraph (3)(b), substitute:

(b) the provider’s corrected basic amount for the preceding year was less than 99% of the provider’s basic grant amount for that year.

(48) Clause 33-25, page 42 (lines 8 to 10), omit subclause (4), substitute:

(4) The adjustment under subsection (3) is an amount equal to the difference between:

(a) 99% of the basic grant amount; and

(b) the corrected basic amount.

(49) Clause 33-25, page 42 (after line 23), after subclause (5), insert:
Corrected basic amount exceeds the basic grant amount

(5A) A higher education provider’s *basic grant amount for the grant year is increased by an adjustment if:

(a) the Commonwealth Grant Scheme Guidelines neither:

(i) provide for an adjustment when the provider’s *corrected basic amount for the preceding year exceeds the provider’s basic grant amount for that year; nor

(ii) provide that there is to be no adjustment in these circumstances; and

(b) the provider’s corrected basic amount for the preceding year exceeded the provider’s basic grant amount for that year; and

(c) the Minister determines that the provider’s basic grant amount for that year should be increased by an adjustment under this subsection.

(5B) The adjustment under subsection (5A) is an amount equal to the lesser of the following:

(a) 1% of the *basic grant amount;

(b) the difference between the *corrected basic amount and the basic grant amount.

Senator STOTT DESPOJA (South Australia) (4.30 p.m.)—In relation to most of those amendments, but particularly beginning with the requests (28) and (30), obviously the Australian Democrats have moved amendments that relate to the grants as well, and that particular request is different from, and conflicts with, an Australian Democrat request. I may as well address as many of our amendments as I can in the interim, given that we are debating such a large block of amendments now, albeit related to the grant provisions. The Australian Democrats in our requests (28) to (30) had sought—and we still would like to but I do not think we are going to be able to; I think the majority is against us—to increase the funding that would be made available under the Commonwealth Grants Scheme for the years 2005-07. We were looking at a one-third increase on those amounts and obviously, as the chamber has to make that request, it was in the form of a request in relation to additional funding. I think the issues as to the need for additional funding in our institutions have been well canvassed, not just in this chamber but particularly in the comprehensive Senate inquiry that took evidence from all groups in the sector and indeed groups in the community. So the Democrats would have liked to have seen an increase in the maximum grants that are provided for in the legislation. We regret that that will not be the case today. We would like to see additional funds in the form of public funding as opposed to this insidious cost shifting that will inevitably result as a consequence of this bill being passed.

Senator Vanstone, those are my comments in relation to maximum total grants. I might just quickly review whether there are other amendments of ours that go to the heart of these provisions and whether or not we seek to make any further comments at this time, but otherwise we also obviously are ready to debate these amendments en bloc.

Senator NETTLE (New South Wales) (4.33 p.m.)—I propose to speak now to the issues in this block of amendments that the government is moving together for which the Australian Greens have separate amendments. For example, we have a request, request (3) on the Australian Greens’ sheet of amendments, which again deals with the issue of increasing Commonwealth grants. I might speak to that now and then we are happy to proceed with the block of government amendments on this issue.

In relation to increasing Commonwealth grants, which is what the Greens’ proposal
seeks to do, over the last seven years we have seen core funding of universities from government decline in real terms and as a percentage of university running costs. Since 1996 government expenditure on operating grants has gone from $4.9 billion to $5 billion—a reduction in real terms of over $1 billion. This has the share of university funding trending down from 61 per cent to 45.6 per cent. The changes being introduced in this bill will make matters worse. The government will by 2005 have decreased its share of funding per planned student place by 17.8 per cent since 1996. This is all part of what government senators have been calling for in the need to unhitch universities from the vagaries of budget cycles, but in reality it is more about unhitching the government from the responsibility of paying for university education.

What all of this means is something we have talked a little bit about in the chamber to date: the crowded lecture halls, falling standards and rising teacher-student ratios and an increase of corporate influence, where ultimately students are expected to go through a pay-as-you-learn style education system. The Greens’ amendment which I shall move when we get to it on the running sheet, which is only two away from where we are now on the sheet, seeks to redress this situation within the confines of the bill. As is true for all of the Greens’ amendments, they are put forward in the context of our non-support for this bill but in the spirit of making some essential changes to redress the worst aspects of the legislation. The amendments increase the Commonwealth contribution to universities via the CGS by 33 per cent, and this would have the effect of delivering over $1 billion extra in direct funding for each year of the next triennium. This funding replaces funding that has been stripped from the sector over the past decade or so and in doing so allows universities to address the issues of staffing levels and resource pressure. Crucially, under the government’s HECS-HELP scheme, it would allow universities the opportunity to reduce the fee burden on students by using the flexibility of that system to reduce the fees that they charge to students below their current rates.

This funding amendment goes hand in hand with other funding amendments that are put forward by the Greens and others that go to reducing the level of HECS, increasing the HECS repayment threshold and indexing the Commonwealth’s funding of universities to more accurately reflect the real rise in the cost of providing higher education. All those changes are made in recognition that the Greens believe we should be returning to fee free tertiary education, and hence in the context of this debate we are making proposals relating to the level of HECS funding but also in this particular instance in relation to Commonwealth funding. So we will not be supporting this series of government amendments, and in a short period of time we will be putting up the Greens’ proposals to increase the Commonwealth Grants Scheme funding for universities.

Senator MURPHY (Tasmania) (4.37 p.m.)—In dealing with matters such as HECS fee increases, these are obviously very important amendments. They are important because they lead to an increased impost on students. When I considered all these matters, I considered the overall situation for universities—including, I might add, industrial relations issues. There has been some discussion with the government on industrial relations matters. The position of the government—and particularly its Department of Employment and Workplace Relations—is very interesting. It put up a proposition to
insert a clause in the act that would have acted against the intent and principle of the Workplace Relations Act. It sought to undermine the application of enterprise bargaining agreements in a way that was contrary to the provisions of the Workplace Relations Act. There is no other work sector requiring employees to have workplace agreements that would override enterprise agreements. The reason the government said that it needed to do this was that it wanted some flexibility for universities to be able to employ academics and to pay them more money so that students would have the best educators.

Universities are already able to do that. They have that flexibility; they pay higher wages; they have enterprise agreements; and they have individual contracts. As to some of the flexibility arguments that were run up initially, let me read from some university enterprise agreements that go to the question of matters that are excluded from enterprise agreements, allowing universities to employ staff on contract. The University of Melbourne agreement states:

Conditions excluded in respect of individual contracts. Contracts may provide that academic award provisions on termination, other than redundancy, probationary employment, redundancy or general staff award provisions on disciplinary procedures, as well as agreement provisions relating to unsatisfactory performance, misconduct and disciplinary arrangements and review and appeals committees do not apply.

The Monash University agreement states:

Contracts may provide that any or all of the following do not apply: redeployment, redundancy, consultation about change, discipline, unsatisfactory performance, performance management, salary packaging, grievance, annual leave loading, salary increases, termination of employment, regulation of mode of employment.

The list goes on for nearly every university. I will not bore the chamber with all the flexibility that universities have. The government has no argument with regard to flexibility. What this matter comes down to is an ideological position—not, I would think, on the part of the Department of Education, Science and Training but on the part of the Department of Employment and Workplace Relations. Minister Abbott and Minister Andrews, who were in pursuit of an objective that they were unable to achieve in the debate in this parliament on the Workplace Relations Act, are now seeking to undermine the process, go through the back door and get outcomes that they sought and could not achieve. That is totally unacceptable. Their arguments are threadbare as to why they need this. They cannot argue for flexibility. They cannot argue that there is no capacity for employees at a university to be offered Australian workplace agreements, because the act allows employers to do that; it allows employees to request them. That is why it is important that we amend this legislation to ensure that we uphold the principles and the intent of the Australian Workplace Relations Act. There is no reason why we should allow industrial relations principles to be applied to future funding of the higher education institutions of this country.

It would be a very sad day if we were to deny universities the funding that they so desperately need on the basis of ideology. As I say, I do not believe it is the minister’s ideology; it is the ideology of other sections of the government that are in pursuit of this. Throughout the discussions that have occurred it has been my view, and the view of others, that that is an unacceptable outcome. One matter that is fundamental to all the matters that we are dealing with is the matter of industrial relations.

Another issue that has been raised which is very relevant to funding matters is the question of indexation. It is only because there has not been an adequate indexation
model in place that the universities are in the financial situation they are in. That started under a Labor government and it has continued under the coalition government. It is interesting to note that, in all of the higher education funding annual reports, there is mention of a review of indexation—right up until March 1999. To paraphrase that mention, it says: ‘We are waiting for the ABS wage cost index. When we get that, one assumes there will be a review of indexation.’

But of course this bill was introduced into this chamber with no proposal to review indexation. It now has one. There will be a review of indexation and the government will respond to the review by April 2005 and will introduce legislation to give effect to its response. I am sure that at that time the Senate will guarantee there is a reasonable approach taken with respect to an indexation model that will go into legislation for the future funding of universities, because it is so important.

It is critical that, if we take the words of the government—and many speeches have been made about how important higher education is to the future economic wellbeing of this country—we do these things. With regard to the arguments about so many aspects of this bill, I know this is not the best package. It is a question of what you do if you have nothing. We could have a prolonged debate; maybe we could go on and debate this next year. But the question is: what does that do for universities? That is what is important.

As I said, the principle in terms of how we deal with the funding matters is very important. I have had to deal with some issues that have been difficult for me, but we are trying to get this at least halfway right. I know people are going to say we ought to get it all right, but when we try to deal with some aspects of the government that is not always possible. I will be supporting the government amendments, but there are some very important issues that deserve consideration.

Finally, as I pointed out at the start with respect to the industrial relations side, the people within the government pursuing industrial outcomes and trying to link university funding to industrial outcomes have got no argument. It is for those reasons that we must amend the bill finally, to ensure that universities have the same freedom as any other employer to negotiate with their employees on whatever basis they choose and they can do so under legislation that has national application: the Workplace Relations Act.

Senator CHERRY (Queensland) (4.48 p.m.)—I want to respond briefly to Senator Murphy. I have not spoken in this debate. I was not intending to speak until somewhat later in the debate, but I did want to very quickly note some of the points he raised, because they are important. The issue is whether the universities desperately need this money so much so that we should pass this package of bills. This comes back to the core issue of whether what we are dealing with here is a good package or a bad package. I think that is a key issue that this chamber needs to consider. I have had emails from very senior academics—not vice-chancellor level, but very senior academics—saying we should not pass this package and that the universities can muddle on without this package. They say that because the universities have muddled on for seven years without this package. Universities have muddled on, finding money in various ways without the huge increase in HECS that we are putting into this package.

I know that, over the last seven years, universities have been relying more and more
on outside funding. I was at one of my Queensland universities recently where the vice-chancellor was advocating that I vote for this package because the university was struggling with money. At the same time, he was pointing to a $21 million development across the road, which he managed to fund with money coming from sources outside the university. I do not believe that the universities need this package as desperately as the Independents believe they do. I think they have been speaking too much to the vice-chancellors and not enough to the students. I want to come back to this a bit later on in this debate. The problem with this package is that it is predicated on an increase of up to 25 per cent in HECS over the course of the next three to four years. According to the Phillips Curran report, that will result in an extra $290 million a year being collected from students by 2007 and the proportion that students are paying for their courses rising over the next three to four years.

What would happen if this package fell over? In 2004, to be perfectly frank, not very much. The increases to the universities do not really flow through until 2007. The way the indexation formula in the grants we are discussing actually works is that in 2007 they will have been indexed so that they are in the same position they were in last year. So, essentially, all this angst we are going through—the huge increase in costs we are putting on students—is to bring universities up to the position in 2007 that they were at last year. Next year, they suffer a funding cut; the year after that, they suffer a funding cut; the year after that, they start coming square and it is a year after that that they come square completely. That is this huge increase of $1.5 billion to $1.7 billion that we are being told universities are getting, which is going to make them so much better off that we have to vote for this package, regardless of the impost on students.

I was hoping we would be dealing with a better package here today—I really was. I would be quite happy to vote for that $1.5 billion to $1.7 billion if the package were adequate. The problem is that the package is not adequate. I believe that the Independents do need to have a look at this package at the third reading stage and ask whether the universities can muddle through for another year or two. I think they can, because the funding in this package is so weighted down the track—to 2006 and 2007—that they can survive next year without this package. The University of Western Sydney will be better off next year and the year after that without this package. The Victorian University of Technology will be better off without this package. The universities in my state, because of the growth places that will come through, do not really need this package either—except for James Cook University, which has been bought off, being in a marginal seat.

The key thing with this package is that it shifts the costs to the students in a huge way, with up to a 25 per cent increase in HECS. I know vice-chancellors have crossed their little hearts and told various Independents that they are not going to increase their fees by that much—except for the University of Sydney, which is a bit more honest than most—but they will. They will because of the macabre nature of the education market. You can see it in the Phillips Curran report. Education is such an odd market that price is a substitute for perceived quality. That means that, once Sydney puts their fees up by 25 per cent, many universities and all the Group of Eight universities will have to match it because price is a perception of quality. That will have to be met by students right across the place. That is why this package is flawed. That is why I believe that, notwithstanding the funding increases in this bill, the package should be voted down at this stage—because
it is just not good enough. It may be good enough with a few more amendments, but it is not good enough now.

In response to Senator Murphy, I agree with his argument about the link to workplace relations. I agree with it absolutely: it should not be in here. It should not be necessary. It is a breach of the Workplace Relations Act. I am pleased that, alone of the Independents, Senator Murphy has been saying from the very beginning that he would not vote for this package if the linkages were improper. I think it is disappointing that people have been mesmerised by the figures, but the figures only look mesmerising because of the cuts that are coming out. The universities have survived and muddled through for seven years without this package; they can muddle through for another year. Let us make university education an election issue rather than imposing on university students a 25 per cent fee increase.

Question agreed to.

Senator CARR (Victoria) (4.54 p.m.)—I move:

(29) Clause 30-5, page 34 (lines 28 to 30), omit paragraphs (1)(a), (b) and (c), substitute:

(a) for the year 2005—$3,132,942,000; or
(b) for the year 2006—$3,310,863,000; or
(c) for the year 2007—$3,501,201,000.

Statement pursuant to the order of the Senate of 26 June 2000

The effect of the amendment will be to increase the amounts available to fund various grants under the proposed Act. The payment of these grants will be met from the standing appropriation contained in proposed section 164-25 of the bill.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure under a standing appropriation. This request is therefore in accordance with the precedents of the Senate.

Senator CARR—I seek advice on this: I understand that, because there is the same provision in the transitional bill, a separate request for an amendment will need to be moved to that bill. Is that the case?

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—I understand we are dealing only with the Higher Education Support Bill 2003 now.

Senator CARR—That is right, so I will need to move a separate request for an amendment to the transitional bill. This request for an amendment is to add 20,000 places to this bill. The request for an amendment increases the maximum grants to universities to allow the creation of an additional 20,000 places for commencing students by 2008. This gives effect to the commitment that the Labor Party outlined when my colleague Ms Macklin announced the Aim Higher package, which is part of a $2.34 billion package—substantially larger than the government’s arrangements—which seeks to rebuild and reform our universities. Every year around 20,000 qualified university applicants are turned away from our universities simply because the government has not provided sufficient places. These are the people that the Australian Vice-Chancellors Committee are telling us are qualified and that the universities should be able to offer places to if the government were to fund them.

This is the sort of thing one could have got if one were serious about a package
overall. So it is a disappointment to me that some on the Vice-Chancellors Committee have been so willing to lend their names to what is a grossly inadequate proposition. So what I am suggesting here is that we have to acknowledge that the government has failed, that there is a need to provide additional funding places way over what the government suggested—way over the numbers the government has conceded at this point—and that we have to provide an additional 20,000 places. This, of course, is consistent with what the OECD is suggesting is required in countries such as ours. As its statistics point out, we have the second-worst performance with regard to enrolment rates throughout comparable countries. We really do have a shameful performance record with regard to our capacity to encourage participation in our higher education system.

The trouble with the arguments people put forward when saying how bad things are in the higher education system at the moment is that they neglect the fact that in 1996 this government cut 20,000 places from the forward estimates. Senator Murphy has spoken of indexation. There were changes in 1995 with indexation arrangements on a temporary basis until such time as the new indexation formulas were prepared following advice from the ABS. It was not the Labor Party that continued that policy; it was this government that continued that policy—and not just that: it withdrew 20,000 places. We have had billions of dollars taken out of the higher education system, so I can understand why some of the vice-chancellors have become so desperate that they are prepared to accept second- and third-rate propositions in the bid to pick up a few crumbs. I might add, though, that, despite all the wheeling and dealing on this, there is still no serious money for universities for three years.

As for the indexation proposals that Senator Murphy speaks of, even if the government accepts them, all we are talking about is getting the mirror out again and having a good look into it. That is all we are doing. The proposal that some people think that we should be enchanted by is a proposition that the government has another review. We know the old adage in politics: ‘We’ll send it off to a committee. We don’t want to make a decision—we’ll send it off to a committee.’ But what we are being told is: ‘We’ll send it off to a committee, we’ll get the mirror out, we’ll have a good look into it and then, maybe in 2007 or 2008, we’ll think about putting it into the budget’—two elections away! This is the great package. What masterful negotiators we have been faced with! What extraordinary genius it is to produce a proposition where we have a committee, we get the mirror out, we have a good look into it and then, in two elections, we think about providing indexation! Remember, the vice-chancellors said this was the bottom line—there will be no retreat, no backdown, on this. How extraordinary it is! This is why I say this is craven capitulation.

We have put forward a proposition for you to look at: 20,000 places. You have the opportunity to vote for it. We have the situation where the budget is miles in surplus. There is no excuse on financial grounds, there is no question about the economic and social need; what there is is a lack of political backbone, because we all know the answer here: the deal is done. We have got our checklist; this is a requested amendment that has a cross beside it that says, ‘Do not support it. It is an opposition-requested amendment. No matter what the need, no matter what the justification, no matter what the grounds—do not support it.’ We will see whether I am right or wrong—because that is the proposition we are looking at, isn’t it? The deal is done, and this is one of those propositions. For that reason, we will be dividing on this request for an amendment and we will give people
the opportunity to put their vote against the logic of the case.

**Senator VANSTONE** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (5.00 p.m.)—I am gathering my karma because it does sometimes get a bit stretched when Senator Carr, the good senator opposite, makes his contribution as though there is some background noise that he needs to speak above, and it can be a bit confusing. If you listened to the senator put his impassioned speech, you might think that universities were not getting any more places. But he needs to make it clear, calmly, that by 2008 there will be about 34,000 new Commonwealth-supported places in the system. By 2008 universities will have reduced the marginally funded overenrolments down to the permitted five per cent level, or by some 12,000 places. That means that overall, with the new fully funded places and the reduction in marginally funded places, there will be about 24,000 additional places in the system by 2008.

In addition, universities will be permitted to enrol full fee paying students, with their numbers limited to a one-on-one basis—that is, one full fee payer for each Commonwealth-supported place—should they wish to. I wanted to put that on the record because this morning there were a couple of impassioned speeches, and people might have had the impression that the government had nothing to offer in this package. As Senator Carr’s comments related to places, I thought it was worth putting those matters at least on record.

Senator Carr says, ‘The budget is in surplus,’ and yes, it is, only because this government manages the budget very well and does not—unfortunately, I think sometimes—give in to ministers. All ministers would like to spend more money in their areas. I am advised that this requested amendment would cost about $300 million. It is easy to stand up and say, ‘Let’s spend a third of a billion here and a third of a billion there.’ But it is not always easy to do that in every portfolio and still keep the budget in good shape, which of course we do because, by keeping the budget in good shape, you can keep unemployment down and you can keep people in jobs, you can keep interest rates low, people are able to afford housing and they are able to keep their businesses running. All of these things are important. You can only do all that if you exercise a very tough discipline in spending. I just thought I would put on record the number of places available.

**Senator CARR** (Victoria) (5.03 p.m.)—The minister’s contribution is revealing. The proposition we have been asked to accept is that the government is extraordinarily generous; it is adding 34,000 places to the system. That is the claim that is being made. What the minister does not tell you is that her government is taking out 34,000 places from the system as well—34,000 marginally funded places. Of course, if we bear in mind the normal demographic changes in our society—just the normal pattern—we require the better part of 1,500 new fully funded places per annum just to keep pace with the normal changes in demographics. That is not to mention the changes in participation rates in the work force, that is not to mention the need for adult mature age entry and that is not to mention the plethora of other factors that go to the question of participation rates.

The government took out 20,000 places in 1996. So if you want to know what has happened to the system and why there has been such a crush on quality, it was the govern-
ment’s decision to force the funding arrangements through these marginally funded places. To then big-note yourself by saying, ‘We’re going to replace them with fully funded places but not take into account the growth factors that would normally be the case,’ I think is to stretch credibility. What we have here is a package that has not changed in this regard. The government expects growth funding to come from private fee contributions. That is the truth of it. That is what the vice-chancellors have signed up to—that effective growth will now come from the capacity of universities to charge additional fees. What we should understand—and this will be a point we will be making throughout the next year—is that this government is not facing up to its responsibilities.

The government says, ‘The opposition’s approach would cost an additional $300 million.’ That is a figure we would agree with. It is the figure we put down in our policy documents. It is $300 million in a budget, over that three-year period that the minister speaks of, of $15 billion. It is not a cost; it is an investment of tiny proportions, but one that would fund quite significant growth and allow us to address the question of unmet demand in our universities. This is a very reasoned and reasonable request for an amendment. I look forward to your support.

Senator STOTT DESPOJA (South Australia) (5.06 p.m.)—The Australian Democrats will be supporting the request for an amendment put forward by Senator Carr on behalf of the opposition. In some ways it is our second preferred position. I foreshadowed that the Australian Democrats also have an amendment that deals with the issue of the maximum grants, and obviously Senator Nettle has one as well. Certainly I think Senator Carr has raised some of the key issues in this debate, as have Senator Murphy and my colleague Senator Cherry before me, and they include the issue of increasing indexation. It is a fact that universities are indexed differently from schools and, as a consequence, that results in something like three per cent less funding annually for our universities. This package fails to address that issue—there is no debate about that.

The debate has moved on to whether or not it is appropriate to enshrine in the legislation the commitment to a review that reports by 2005 and then deal with indexation arrangements for 2007-08 and beyond. Certainly there are a number of us in this chamber who think it is not good enough and that it is a weaker position. We feel this legislation has not addressed the situation in which universities have found themselves since the 1990s. I have put on record before that this is not just a consequence of this government’s inappropriate funding but also the result of a funding mechanism of a former Labor government.

Since 1994 that funding shortfall has been estimated to be $600 million to $700 million, and this legislation does not address that. Some senators may recall that at the Senate committee inquiry into this legislation the Vice-Chancellor of the University of Sydney, Professor Gavin Brown—a former vice-chancellor from my alma mater, the University of Adelaide—made some highly critical and quite specific comments about the legislation. But one overall comment that attracted the attention of the committee was that the proposals in this package are not sustainable in the medium to long term and that there will continue to be an in-built degradation factor.

As we know, the government has cut many millions—billions—from university grants since coming to power. We have heard senators put on record the changes that took place in 1996 and that this legislation should be an opportunity to redress some of those
issues. We have heard about the back-ended nature of this funding and how everyone is concerned about the short-term arrangements. Most senators would be aware—at least I think most are aware—that, if this package is not passed now, universities do have their funding for 2004. Some senators in this chamber will also be aware that the estimated difference between the funding under this bill compared with the Higher Education Funding Act is $117 million less for 2005. So, obviously, there are indexation and grants issues.

Finally, I give notice to Senator Vanstone now that I will be seeking leave shortly to move Democrat amendments (28) to (38), including a request, together. Perhaps you can have a look at them and let me know whether that will be appropriate. There is only one amendment I will seek to exempt from that group, and that is amendment (34). That amendment enshrines or formalises the minister’s commitment and claim that no university will be worse off. I give notice to the chamber as well that the Democrats would like to divide on that amendment. In the meantime, I will be supporting the ALP request before us.

Senator Nettle (New South Wales) (5.11 p.m.)—The Australian Greens will be supporting this request for an amendment by the opposition. We have three lots of amendments before us: firstly, those of the opposition, then those of the Democrats and, finally, those of the Greens. Perhaps those amendments seeks to increase the amount of funding the government provides to our public institutions and universities. The levels of generosity vary and increase as the amendments move on. Clearly, we will be moving and most strongly supporting the amendments of the Australian Greens which give the most significant contribution from the Commonwealth to our public universities. But, in turn, we will be supporting the amendments moved by the opposition and the Democrats to increase that funding to our public universities.

Question put:

That the request (Senator Carr’s) be agreed to.

The committee divided. [5.16 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes…............. 31
Noes………......... 33
Majority………... 2

AYES


NOES


* Minchin, N.H. Patterson, K.C.
Senator STOTT DESPOJA (South Australia) (5.19 p.m.)—by leave—I move Democrat amendments (28) to (33), (35) and (38) and request (36):

(28) Clause 30-5, page 34 (line 28), omit “$3,086,242,000”, substitute “$4,104,701,860”.

(29) Clause 30-5, page 34 (line 29), omit “$3,215,263,000”, substitute “$4,276,299,790”.

(30) Clause 30-5, page 34 (line 30), omit “$3,342,701,000”, substitute “$4,445,792,330”.

(31) Page 35 (after line 4), before clause 30-10, insert:

30-8 Criteria for the allocation of places

In the performance of his or her functions under this Part, the Minister shall have regard to:

(a) recommendations made by the Higher Education Funding Council under Subdivision 165; and

(b) the expressed preferences of higher education providers; and

(c) the needs of the communities which each higher education provider serves; and

(d) the funding provided by the Commonwealth to a higher education provider in the previous period; and

(e) any growth or contraction in the number of persons undertaking particular *courses of study with a higher education provider or in the region in which the higher education provider is located; and

(f) the importance of maintaining higher education providers in regional areas;

and shall exercise those functions so as to promote the objects of this Act.

(32) Clause 30-10, page 35 (line 6), omit “may”, substitute “must”.

(33) Clause 30-10, page 35 (after line 19), at the end of the clause, add:

(5) The allocation must be made in accordance with the criteria specified in section 30-8.

(35) Clause 30-25, page 36 (after line 19), after subclause (1), insert:

(1A) Universities are to be exempt from the proposed funding agreement model and be allowed to maintain the current profiles arrangement for determining funding.

Note: Educational profiles are defined in section 14 of the Higher Education Funding Act 1988.

(36) Clause 33-10, page 39 (table), omit the table, substitute:

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<td>6 Computing, Built Environment, Health</td>
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<td>Engineering, Science, Surveying</td>
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</table>

(38) Clause 33-25, page 41 (line 1) to page 42 (line 26), omit the clause, substitute:

33-25 Adjustments that apply in the absence of guidelines

Universities who over-enrol students by more than 5% will not be funded for those additional students.

Statement pursuant to the order of the Senate of 26 June 2000

The effect of the amendments will be to increase the amounts available to fund various grants under the proposed Act. The payment of these grants will be met from the standing appropriation contained in proposed section 164-25 of the bill.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure under a standing appropriation. This request is therefore in accordance with the precedents of the Senate.

Senator STOTT DESPOJA—Those amendments and the request have perhaps been pre-empted by my previous contribution. Senator Harris asked me whether I was going to run through those amendments. Very briefly, the first few relate to funding increases under the Commonwealth Grants Scheme—indeed, a 33 per cent increase. Others relate to the specifying criteria for the allocation of places and provide some constraints on the minister in the allocation of places. Amendments (32) and (33) are consequential. Amendment (35) relates to the funding agreements. Request (36) seeks to increase the Commonwealth’s contribution by 33 per cent, in line with National Tertiary Education Union recommendations in an attempt to redress some of the funding cuts that have taken place, particularly since the Howard government came to power. Making it 33 per cent rounds it off to a billion dollar figure. As most senators would know, the National Tertiary Education Union estimated that as the amount that has been cut or that the sector has lost in government funding in real terms between 1996 and 2001. Their research compared real university operating funds per student with the real net cost to government per student. The data showed that, in 2001, it cost the government $2,325 less per student than it did in 1996. When multiplied by the number of students, this represents a real saving to government expenditure in 2001 of almost $1 billion—to be precise, $996 million. So, if you look at it in those real terms, the government is actually saving money.

Amendment (38) removes that link between the national governance protocols and the workplace relations policies of the Australian government. The Democrats have put on record our very strong opposition to tying funding to governance and workplace requirements. Is Senator Carr happy to deal with that in this block or would he prefer to deal with that amendment separately?

Senator CARR (Victoria) (5.22 p.m.)—The opposition cannot support Democrat amendments (28) to (30) or request (36), simply because they have funding implica-
tions which, as an alternative government, we could not sign up to without a process of further discussion.

Senator STOTT DESPOJA (South Australia) (5.23 p.m.)—Democrat amendments (37) and (34) have been exempted from this batch of amendments. Turning to Democrat amendment (38), whilst the Democrats are not in favour of universities overenrolling students, and therefore diluting the amount of funding per student, we feel that the absence of funding is penalty enough and that the decision to remove the formula for reducing grants to overenrolling institutions is an unnecessary administrative task. With those brief comments, and with the exemptions of Democrat amendments (34) and (37) from that batch, I commend the amendments and the request to the Senate.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.24 p.m.)—I am advised that, without having that cap, the universities can keep the marginal fee that the students have paid and just keep overenrolling. The government will not be supporting these amendments and the request.

Question negatived.

Senator NETTLE (New South Wales) (5.24 p.m.)—I move Australian Greens request (3):

(3) Clause 30-5, page 34 (lines 28 to 30), omit paragraphs 1(a), (b) and (c), substitute:

(a) for the year 2005—$4,012,114,600; or
(b) for the year 2006—$4,179,841,900; or
(c) for the year 2007—$4,345,511,300.

Statement pursuant to the order of the Senate of 26 June 2000

The effect of the amendment will be to increase the amounts available to fund various grants under the proposed Act. The payment of these grants will be met from the standing appropriation contained in proposed section 164-25 of the bill.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure under a standing appropriation. This request is therefore in accordance with the precedents of the Senate.

Senator NETTLE—I will not speak to this request now. This is another attempt to increase the funding that goes from the Commonwealth to our public universities. This is third time lucky in trying to persuade the Commonwealth government that Australian universities deserve more money. The Australian Greens again attempt that with this request.

Question negatived.

Senator STOTT DESPOJA (South Australia) (5.25 p.m.)—I move Australian Democrat amendment (34) on sheet 3189 Revised:

(34) Page 36 (after line 14), after clause 30-20, insert:

30-22 Minimum total grants

(1) The Minister must ensure that no *university or listed *higher education provider receives less by way of basic grant amount under this Part in each year of the years after 2005 inclusive, than is applicable for the relevant year in the table.
Minimum total grants to a university/Table A provider or Table B provider

<table>
<thead>
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<th>Item</th>
<th>Year</th>
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<td></td>
<td></td>
<td>*indexation factor</td>
</tr>
<tr>
<td>3</td>
<td>2007 onwards</td>
<td>Total amount for the previous year x</td>
</tr>
<tr>
<td></td>
<td></td>
<td>*indexation factor</td>
</tr>
</tbody>
</table>

(2) The indexation factor is defined in section 198-15.

I make it very clear that this is a key amendment for us. This is an amendment that we have discussed with the sector, including with individual vice-chancellors, specifically vice-chancellors who may belong to institutions that have good reason to be worried. This amendment seeks to formalise the minister’s promise that no institution will be worse off under these reforms. So we are seeking to ensure that a minimum grant is maintained for the years 2005 to 2007. I commend the amendment to the chamber. I think the rationale behind this amendment has been adequately canvassed.

Senator CARR (Victoria) (5.26 p.m.)—I indicate to the committee that the opposition has a very similar amendment—that is, opposition amendment (34). However, for the purposes of this debate, we will roll it in and take it in the vote for the Democrat amendment because, as I say, it does essentially the same thing. The purpose of this proposal is to ensure that no existing institution loses funds in Commonwealth grants for general teaching purposes as a result of the shift to the new government regime.

My reading of the situation is that, at the moment, four institutions will continue to lose very badly out of this package: the University of Western Sydney, the Victorian University of Technology, the Victorian College of the Arts and the Australian Maritime College. They lose very badly because of their particular discipline mix and the nature of their courses. In the case of the VCA, that institution is currently funded at a rate that reflects the specialised nature of their courses. The VCA teaches at an elite level. Entry to the college is highly contested, with many thousands applying each year for only a few hundred places. It is a centre of real national excellence.

The AMC is also a highly specialised institution. In the cases of the University of Western Sydney and the Victorian University of Technology, they are both universities in outer metropolitan areas in Sydney and Melbourne respectively where they have very low university participation rates from their catchment regions and where there is an unarguable and massive need. Of course, these universities will be very badly affected by this government’s proposals. We see nothing that addresses that. Essentially, these two universities have shifted their course load to try to more accurately reflect the needs and aspirations of the people who live around them and they will be seriously disadvantaged by the new arrangements. The fact is that the Commonwealth will no longer fund at the notional average per student cost, which in the past was seen to reflect the actual cost of teaching the mixes and loads, and we will see an average cost effected across various clusters.

The opposition proposes these particular arrangements because it believes that there is no guarantee whatsoever, and the Vice-Chancellors Committee ought to have done a
lot better here to defend members of that committee. They have failed to do so. We have a situation where I think there is a need for redress. Honour needs to be returned to commitments because, frankly, at the moment they are not worth the paper they are written on. In other aspects of the education portfolio, in the past commitments were made and written into the legislation—take, for instance, the States Grants Bill and the schools bill. A whole category of private schools were actually guaranteed funding maintenance. Despite the so-called rigorous approach that was taken to the movement to the new funding formulas, those institutions were protected and were guaranteed money. Of course, that is not the model that has been followed here.

The advocates for these institutions have let them down badly. That is a point we will be making the length and breadth of this country. We will be making the point that the University of Western Sydney has been ripped off something shocking by this government, because essentially it services a working-class community. This government has turned its back on its obligations to ensure genuine equity of opportunity. The same applies in Melbourne. It is not the great and powerful institutions of this country, the ones that can rely upon the benefits of 150 years of public investment, which ought to have the protection of the parliament; it is the weakest institutions, the newest ones, the ones that actually service the poorest communities. And the Vice-Chancellors Committee has let this sector down very badly.

Frankly, I am very disappointed that the temporary custodians of public education—people who are in the job for a short period of time but have an obligation to the country to make sure that everyone gets a fair go—have let the side down very badly. I am bitterly disappointed that Jan Reid and her colleagues at the University of Western Sydney have been abandoned so badly by this government and all the members of the Liberal Party in those marginal seats. They have walked away from her and from that institution, aided and abetted by the Vice-Chancellors Committee. It is a tragedy that the Independents have been beguiled in this process. It is a profound disappointment. They are not here at the moment, and that is a disappointment too, but the fact remains that they should have done better.

We were told that the VCA was, of course, a key institution that had to be protected. Well, it has not been. It is presumed that the University of Melbourne will look after it. We are told that there is some sort of arrangement in place to do it, but that is not so. What about the Victoria University? Another university, a multicampus university, is left high and dry. What is the common characteristic of these major universities? They service working-class communities. This government is not interested in working-class education. It is only too happy to pander to the very wealthy and the very privileged—the ones who are able to look after themselves in so many aspects of the way this country is run. The very people who need our assistance most are the ones who have been abandoned.

Senator NETTLE (New South Wales) (5.34 p.m.)—The Australian Greens will be supporting these amendments, which seek to say that no institution should suffer under the new funding model that the government is proposing for universities. I wholeheartedly concur with the comments that Senator Carr has made about the University of Western Sydney, in particular. Campuses which service communities from low socioeconomic backgrounds are suffering most under this government’s funding model.

The University of Western Sydney has run a tremendous campaign with its local com-
munity about the opportunities that are provided for people in Western Sydney through their university. They have come out wholeheartedly in support of their university. Sometimes we hear from the minister—we heard it at the time of the budget—that people who come from working-class backgrounds do not want to pay for others to be able to go to universities. The University of Western Sydney has done surveys of their entire area—greater Western Sydney, one of the largest population growth areas of Sydney—and has found overwhelming support from working-class suburbs and families for the university there. Individuals in that community have outlined in detail the ways in which they engage with their particular university. They may have the opportunity to send their children to that university, and they also use the services that the University of Western Sydney provides.

The University of Western Sydney is involved in activities with local businesses, local councils and a range of local communities to provide opportunities—not just educational opportunities but resource opportunities—for people in Western Sydney who otherwise would not have access to things like the university library, the UWS venues where activities can be held and a range of different programs that the university has provided to integrate into its area. It is one of the central roles of the University of Sydney to service the greater Western Sydney area in which it is situated. Obviously, it has provided that service well, because it has overwhelming support from the community in that area.

Under this government’s funding formula, the University of Western Sydney loses somewhere between $5.3 million and $12 million in 2005. That depends on what year DEST uses for comparison, whether it is 2002 or 2004, but this is the magnitude of the loss that the University of Western Sydney is going to face in 2005—somewhere between $5 million and $12 million. After that point, when they have dropped down way below other universities, they will get some little pittances of funding along the way—transitional funding to help them move up the scale, after leaping down the $12 million gulf that this government are proposing in the funding formula they are putting forward.

The Senate committee that travelled to the University of Western Sydney heard what this will mean for the people of Western Sydney who use that university and for the people who support the services the university provides in Western Sydney. We have heard from the vice-chancellor that it will mean campus closures and staff losing their jobs. You cannot increase student fees by 30 per cent and expect people from working-class backgrounds to fork out that kind of money to attend the university in their local area. The University of Western Sydney are left with having to make choices. They say: ‘What do we do? The government has taken $12 million from us. We have no choice but to close campuses and get rid of staff.’ This will be the consequence of the funding model that this government is proposing for universities.

I am using the University of Western Sydney as an example because they have been vocal in their campaign in their community and they are a university I have known and worked at for many years. This issue affects them as equally it affects other working-class communities that have universities in their areas, such as the Victoria University of Technology in Melbourne. These communities will suffer significantly, and so too will the areas around them. We are already seeing
the possibility of job losses in the community around UWS, which is one of the fastest-growing population growth areas of Sydney. We are expecting 25 per cent of the growth of Sydney to occur in the council areas of greater Western Sydney. What are the government doing? They are pulling the rug out from under those communities, limiting access to university by taking $12 million away from higher education in 2005. This amendment is saying that universities like the University of Western Sydney should not have to suffer this.

Why does this government think it is acceptable to say to areas like the greater Western Sydney: ‘You can lose your university and the job opportunities that UWS provides for the growing population of Western Sydney. Our funding model serves only to provide support for universities like Sydney University or Melbourne University, so that they can compete in a deregulated environment and can put up their fees’? People from wealthy families will be able to pay 30 per cent increases to go to the prestigious universities like Sydney and Melbourne, but very many people will not be able to pay. People who want to attend the University of Western Sydney, which contributes to their community, will no longer have this opportunity, as this government is proposing to pull $12 million out of their local university. I do not see how any senator in this Senate can believe that is acceptable. That is why these amendments are being proposed and that is why the Australian Greens will be supporting them.

Senator HARRADINE (Tasmania)  (5.40 p.m.)—I must have been reading different documents from those upon which Senator Carr’s and Senator Nettle’s speeches were based. It is not for me to advise the senators as to what has now been negotiated in respect of the University of Western Sydney or in respect of the VCA: it is, I believe, for the minister to outline that to the Senate. The matter was raised by us—that is, the four Independents—with the government, as it has been raised by others, including, I suppose, opposition members in the House of Representatives and the Senate. I believe that the minister should enlighten the Senate as to the current results of those discussions.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation)  (5.42 p.m.)—Thank you, Senator Harradine. You beat me to my feet. Nonetheless, I am not sure that what I have will give you everything you want, but I am about to get some information from the minister’s office back in here to give you more information, if I can.

In relation to the general debate that has been taking place, I want to make this clear: no university will be worse off under the new funding arrangements. The government are providing a transition fund over the first three years of the Commonwealth grants scheme in 2005, 2006 and 2007 to ensure that every university receives at least the same as they would have received under the old funding framework. The reforms are designed to ensure that universities receive funding in line with what they actually deliver in terms of numbers of places and the courses they provide.

In the past, both the University of Western Sydney and the Victoria University of Technology have been receiving a higher rate of funding compared with other universities offering the same disciplines, because they have moved, over time, into providing courses that cost less to deliver. Under the new, fairer framework, both universities would experience some decline in funding in the initial years of the reforms except that these losses will be covered by the transition fund. I put that on the record, Senator Har-
radine, because that would not have been clear from the remarks made by other senators.

Senator CARR (Victoria) (5.43 p.m.)—I am astounded. That is it? That is the assurance, Senator Harradine? That is what you said you had misunderstood—the transitional funding? Let me be clear about this: the transitional funding is temporary; these cuts are permanent. This is permanent damage. What is being proposed is very limited, temporary compensation with which the University of Western Sydney will remain worse off. I am quite annoyed if that is the best you have done. This is the great deal? It is an extraordinary proposition.

I turn to the Victorian College of the Arts. The minister wrote to the Director of the Victorian College of the Arts on 3 December, indicating that the VCA would continue to be funded through the University of Melbourne, that the University of Melbourne would receive an additional $23 million under this package and that, therefore, the VCA should be happy and grateful. The Acting Vice-Chancellor of the University of Melbourne wrote back on 4 December saying:

The attached letter was received … by Professor Andrea Hull, Director of the VCA. As you can see, the letter confirms that a funding ‘agreement’ will force the University of Melbourne to subsidise the VCA. The $23 million … over three years referred to by Dr Nelson assumes that the university will receive workplace reform grant increases. It is highly unlikely that we could successfully apply for that money. Consequently, subsidies for the VCA would need to be financed by taking the money out of University of Melbourne courses.

Senator Harradine—What time was that letter?

Senator CARR—It is dated at one minute to 12. The letter also says:

It is highly regrettable that the Commonwealth has decided to make the University of Melbourne’s staff and students pay for what is essentially its own bureaucratic mistake.

It goes on to say, because they are very generous at Melbourne University:

Possibly due to the high turnover of staff within DEST, they were not aware, when determining per student funding, that in 2000 a special agreement had been made with the VCA to fund them at a rate that would allow them to survive as a quality teaching institution. Similar problems seem to have been resolved for the Australian Maritime College and the Batchelor Institute of Indigenous Tertiary Education, but not for the VCA. The University urges—

I am sorry, Senator Harradine, I should be more accurate; this letter is to you! So you would have received this. It urges you, Senator Harradine:

to find a solution to the VCA’s funding problem. The most obvious course of action would be to make the VCA, like the Australian Maritime College and Batchelor, a national institute with the appropriate funding commitments from the Minister.

It strikes me that we have a major inconsistency between what Senator Harradine is being told, what Senator Vanstone is saying here in the chamber and what the Acting Vice-Chancellor of the University of Melbourne is saying to us today—two hours before this running sheet was put together—is the case. I am not an expert in the affairs of the University of Melbourne, but I presume that the Acting Vice-Chancellor is. The Acting Vice-Chancellor is saying, ‘There’s no deal. It’s not appropriate to try to make the University of Melbourne’s staff and students pay for what is essentially the department’s bureaucratic mistake.’ It is not the VCA’s fault that there has been this massive turnover of staff in the department of education and that they do not seem to know what is going on. It is our responsibility, though, to
do something about it. There is an opportunity here with this amendment. Senator Harradine, I ask you to support it.

Senator HARRADINE (Tasmania) (5.48 p.m.)—The reason I asked about the time of the letter is that things have changed since that time. The University of Melbourne’s Vice-Chancellor states in that letter that he could not claim moneys under the industrial relations provisions. He could not do that because they would not get their funds, presumably because they would be acting contrary to government policy in several ways. I think you will find out, if you do not know already, that that is not the case. If the University of Melbourne is saying that it cannot do what it is supposed to, because it is not getting the funding due to its failure to meet its obligations under the industrial relations provisions of this bill, that is no longer applicable. The other thing is that I and others have been assured that, if the money did not come via the University of Melbourne to the VCA, it would have to go direct, with of course the University of Melbourne being reduced for the amount that would have to go to the VCA. That is as I understand the situation. The minister may be able to clarify the matter further. With regard to the University of Western Sydney, I am sure that the minister would be able to clarify that as well.

Senator CARR (Victoria) (5.50 p.m.)—Moving to real-time—and it looks as though we are—I have just received a media release from the Australian Technology Network that I would like to share with the chamber. The Australian Technology Network state:

Much progress has been made in delivering Australian universities, their students and staff, a higher education reform package that will set the agenda for the next decade and beyond. The ATN has welcomed measures which will remove the interest rate on students’ fees and ensure that Commonwealth learning scholarships will not be subject to the social security income test. ATN is committed to providing lifelong learning and, in particular, work-related educational training for all who can benefit from it. We also believe a review of indexation of higher education funding is a valuable element in the package under consideration. However, we would question the timing and implementation proposed for 2007-08. Indexation is an important part of protecting the Commonwealth’s investment in higher education and, whilst a review is to start, the sector is looking for certainty in terms of government funding. In this context, we remain concerned by the linking of essential funding increases to workplace reform and government changes.

They conclude by saying—

As a group representing some 170,000 students and 13,000 staff, we support the position
articulated by the AVCC and urge both the government and the senators to reach a good compromise now and ensure the legislation that is passed is as good as it can be.

The media release was signed by Professor Coaldrake and was sent at 4.22 this afternoon. This chamber is moving in the direction that the industry asks of it. This is a conclusive and comprehensive media release from the sector itself. It provides the chamber with an immediate response to the way this bill is developing. It is my intention, and the intention of Senator Harradine, Senator Lees and Senator Murphy, to ensure that those AWA ties are not included, that there is an acceptable set of words from both the government and the sector in relation to AWAs, and that there is a commitment to indexation. It is very clear that the government and this chamber are moving in the direction that the sector indicates it may not be totally satisfied with but that it is willing to accept and work with.

Senator STOTT DESPOJA (South Australia) (5.55 p.m.)—The press release is not actually in real-time; I think it is more futuristic, because it is talking about negotiations, some of which have not been voted on in the chamber yet. It is anticipatory and yet does endorse some of the proposed changes—changes that some of us still do not know a lot about, which is the irony. We are in real-time, debating a bill that should deserve greater scrutiny, much better analysis and examination, and yet we are moving amendments en bloc for the sake of time but also because Senator Carr, Senator Nettle and I know that we have Buckley’s chance of getting half of them passed, no matter how good there are. The operative words at the end of the press release is for legislation that is ‘as good as it can be’. ‘As good as it can be,’ says Professor Coaldrake. This is not as good as it can be.

We have amendments that make this legislation, which is fundamentally flawed, better. The amendments alleviate the worst bits and make some of the okay bits better. Overall, the legislation as it is currently stands—with the amendments that have been debated and passed so far—is not better than the status quo. It is not better than the status quo for the University of Western Sydney. We all know that, particularly those of us who were engaged in the Senate inquiries. It is not better for the Victorian College of the Arts. It is not better for the VUT and other multi-campus institutions. No amount of transitional funding that is short term is going to alleviate the medium- to long-term concerns of the vice-chancellors, the staff and students at those institutions. The amendment that I have moved, which Senator Carr supports because it is very similar to one he would have moved, is the security blanket amendment. It makes it really easy—just in case anything goes wrong with the negotiations or anything is not delivered because most of it is in promises and not necessarily enshrined in law. This is the backup amendment that says ‘no institution will be worse off’. This amendment ensures minimum grants and it does so for the years that are dealt with by this legislation. It ensures that institutions will not be worse off. They will have a minimum—at worst, the status quo.

There is no harm in senators voting for this amendment. If senators are confident of the negotiations that they have apparently secured with the government in relation to funding, particularly for those institutions we are worried about, then they will have no concerns about voting for this. This cannot tamper with the deal at all. It is a very basic amendment. It is a little security blanket just to make sure in case the government goes back on its word, which is not unusual.
Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.58 p.m.)—The government’s position is that this amendment runs counter to the underpinning framework of the Commonwealth Grants Scheme that institutions will be funded for places that they actually provide. It sets up a scenario under which some institutions will be funded for not providing places, which would appear to be perverse. There are other measures in the total reform package that take into account the special circumstances of particular institutions. This amendment is unnecessary, because the funding provided for institutions will be much more than that provided through the CGS.

Senator STOTT DESPOJA (South Australia) (5.59 p.m.)—I would rather have an amendment that is surplus to requirements than not have a safety net. This is ‘counter to the underpinning framework’? The minister has said that no institution will be worse off: how can this run counter to that particular promise and pledge? The underpinning framework? The framework is going to change, yes, but apparently the funding is not. Apparently institutions are not going to be worse off. How does this run counter to anything? This is a fallback, a safety net mechanism. It will ensure that no institution, particularly those institutions that we know are going to be worse off, is going to be hit hard. If the government is so sure that it can deliver on the minister’s promise, why won’t it support this? ‘Underpinning framework’: what kind of language is that? With all due respect to Senator Troeth, who is our third minister today, this is not a good enough response. I urge senators to support this amendment, to vote for this amendment, and I indicate to the chamber that I will seek a division on this amendment because it is a watershed one, whether it is ‘counter to the underpinning framework’ or not.
Sherry, N.J.
Macdonald, I.
Stephens, U.
Tchen, T.

* denotes teller

Question negatived.

Senator CARR (Victoria) (6.07 p.m.)—I move:

(38) Clause 33-15, page 40 (lines 1 to 20), omit the clause, substitute:

33-15 Increases in assistance for higher education providers meeting certain requirements

A higher education provider’s "basic grant amount for a year is worked out by increasing the "Commonwealth contribution amount for each "funding cluster by:

(a) if the grant year is the year 2005—2.5%; and

(b) if the grant year is the year 2006—5%; and

(c) if the grant year is a later year—7.5%.

This amendment will provide for the removal of all industrial relations restrictions upon the Commonwealth grants program. Voting for this amendment will free up $404 million. All the rhetoric can now be put to the test. This is a proposition which we will be dividing on. It removes the proposition that says that any moneys should be tied to industrial relations conditions. What we have throughout this bill are measures—not just in relation to industrial relations—which are draconian in the way they intervene in the affairs of universities. I know that there will be some who will say, ‘We got rid of most of them,’ but there are many things remaining. That is why the vice-chancellor at Sydney University described the government’s approach as ‘bureaucratic central planning’; that is why the University of Melbourne’s vice-chancellor, Alan Gilbert, called the government’s approach ‘across-the-board bureaucracy run riot’; and that is why the so-called governance protocols make a complete nonsense of the claim that the government was about cutting red tape.

The amendment allows for the removal of those ideological bugbears this government has about trying to impose a straitjacket upon the wages and conditions of people who work in this particular sector and, of course, we all know the government intends to impose on the health sector as well. So this is an opportunity for senators to put their votes where their mouths have been and ensure that the universities are not tied, gagged and bound by a process which is determined not even by the Department of Education, Science and Training but by the ideologues in the Department of Employment and Workplace Relations. It is quite clear that the government intends to adopt a blackmail approach by saying, ‘We’ve got some sweetheart arrangement in place where they might have to have only maybes.’ That is not the view of vice-chancellors. It will be interesting to see how far those advocates go in claiming the support of vice-chancellors, because I have it on very good authority that the vice-chancellors would prefer no restrictions and that the present practice is sufficient for them. They do not need this. It was not suggested in the process leading up to the so-called review last year. Of course, it was an imposition by the ideologues within this government and it ought to be rejected by the chamber.

Senator STOTT DESPOJA (South Australia) (6.11 p.m.)—The Democrats will be supporting this amendment, and we have a similar one. The Democrats have made it very clear from the outset that we believe that the link between industrial relations and the additional funding made available to universities should be removed. That seems to
be a majority view of people in the chamber. Therefore, I look forward to the successful passage of this amendment. The $404 million link of funding to meet certain ideologically driven industrial relations and governance requirements is one of the most aggressive features of this legislation, along with the fees, the lack of indexation, the privacy intrusion, the interference in institutional autonomy, up-front full cost undergraduate places—the list goes on. But this clause is really pernicious. This one has ideology and politics written all over it—and not necessarily for a reason that makes sense. It is one that people have suggested the minister is not responsible for; that it might be driven by other political forces. Regardless of that, it has still ended up in the bill and it still deserves to be junked.

It is a position that I share not only with Senator Carr but also with all groups in the sector. It is a position endorsed by vice-chancellors, the National Tertiary Education Union, the postgraduates and the students. All of them do not support this particular measure. The vice-chancellors have been vocal in their criticisms, not only to the Senate inquiry on this issue but also in letters written to members of parliament and people at the highest levels of government.

The recommendation in the Senate committee report could not have been clearer. As I said, it is endorsed by a number of groups and, I think, a majority in this chamber. This is another watershed amendment and one that is important for a whole range of reasons. It has apparently been described as a deal breaker. We will test that theory now. The amendment that the Australian Democrats sought to move—and obviously it has been captured in Senator Carr’s amendments—will ensure that the additional funding is not contingent upon workplace practices.

Vice-Chancellor Ian Chubb—as an example, from the ANU—showed his true leadership qualities when he recently signed an enterprise agreement with his staff which did not meet those industrial relations requirements set out by the government. He said:

I think the new workplace guidelines were too intrusive and I couldn’t see anything in them that could actually improve the ANU.

In fact, the government has taken a strong-arm approach to industrial relations—and let us not forget governance reform provisions as well—by tying $404 million worth of funding to those requirements. The forced introduction of AWAs, the initial removal of the cap on casual staff members and the removal of the existing arrangements that were deemed to be in excess of community standards—all of these have been identified not only by the Senate committee but by many other groups in the sector throughout the last few months as having a deleterious impact on the university staff and the administrative environment of universities. Including those AWAs in the HEWRR is an attack on unions. The government is seeking to turn the higher education sector into a new waterfront in its attempt to impose its ideological agenda.

The Senate inquiry heard repeatedly that the issues affecting workplaces were not the issues that are identified in this bill. There are many other issues in workplace relations in universities, such as inadequate public funding, that are the problem; the relationship between staff and university management has been quite healthy. In fact, the first sign of academic unrest or industrial action occurred this year for the first time in seven years, since the last time we debated legislation like this in 1996, as honourable colleagues will remember. For some of us it feels like Groundhog Day; but the legislation that was debated and passed in 1996 is nothing compared to this.
That healthy relationship between staff and university management is under threat in this legislation, and it is for that reason that there are so many senators in this place who would seek to remove that vital link. Senator Carr’s amendment is a good one. Obviously we will have backups just in case, but given the views that have been expressed by a majority of senators, I cannot see how this will not pass. I commend the amendment to the chamber and indicate that the Democrats will be supporting this amendment.

Senator NETTLE (New South Wales) (6.17 p.m.)—I rise to speak on the industrial relations component of this legislation. During the Senate committee inquiry into this legislation, this was the issue that the vice-chancellors were most angry about. I think that had a little bit to do with timing, because the workplace requirement guidelines came out on the first Monday of the Senate inquiry. The vice-chancellors expressed to the committee their shock and surprise at what was contained in these workplace guidelines. I would like to take the opportunity to read a couple of comments that were made by vice-chancellors to the committee over these workplace arrangements. The first comment is from Professor Peter Sheehan of the Australian Catholic University. He said to the committee:

I think workplace agreements are still to some extent selective. Universities have been singled out. There are a number of professions in which workplace agreements are not running current. Enterprise bargaining, the role of the unions and their position with respect to AWAs are really explosive issues. The government knew about that. When I say I was disappointed I was hoping for some kind of wording that would allow access to funding. What I fear now—and that is why I use the term ‘disappointed’—is that our access to those funds will be blocked by the confrontation and conflict ahead.

Indeed, during the Senate inquiry we saw some of that conflict when, for example, the University of Sydney decided to take industrial action over this issue. I want to read another comment. The Vice-Chancellor of Victoria University said:

My fourth key point is that the industrial conditions in the package are a shock to us. I am a new vice-chancellor, and one of my aspirations is to build a sense of trust and confidence with the staff. I am personally on record as supporting more flexible arrangements and greater choice in employment conditions for academics, but the industrial criteria in this package give me little room for a constructive dialogue about some critical issues with Victoria University staff. I have not mentioned that the industrial conditions put our financial situation in more dire straits—that is, the $9 million to $12 million, which we face losing in the transition period, and the $1 million to $3 million thereafter are at the outer ends if we do not achieve the industrial conditions which allow us to receive an additional 2.5 per cent per annum.

Two other vice-chancellors made similar comments to the committee. Professor Daryl Le Grew from the University of Tasmania said:

On the basis of the industrial relations reforms, we find that what is being proposed is unworkable. We think that our capacity to negotiate, as we do, with our staff is compromised by an over-emphasis and strictures that are being put in place by provisions of AWAs. I would like to point out, and I have pointed this out in other places, that the University of Tasmania already has quite a flexible approach to the way in which we construct our employment—we build it on the base of our collective agreements, and we think that is a good thing. Over the top of that we have L to K agreements, common law contract agreements and negotiated performance pay agreements across the university—these are transparent agreements that occur every year. So we have a raft of flexibility that we think achieves all that the government wants to achieve. We do not know why there is a continuing and obsessive
commitment to something which appears to be more ideologically driven than logically driven at the present time. We are interested in outcomes and we can present the government with outcomes. We think we have done that, but we do not seem to be getting that through.

The last quote that I will read out is from the Acting Vice-Chancellor of the University of Western Australia, Professor Alan Robson. He said:

We are totally opposed to tying funding increases to the introduction of Australian workplace agreements or to being dictated to about how to organise industrial relations within the university. Despite what people might think, universities are very good at human resource management, and they have negotiated significant industrial reform which has been in the best interests of both the staff and the university.

These were the clear messages that the Senate committee was hearing from the vice-chancellors over this industrial relations issue. Vice-chancellors were saying to the committee, ‘Why should we, as universities, who have been starved for funding by this government, not have access to desperately needed funding unless we implement the government’s ideological agenda in relation to Australian workplace agreements?’

We know the government have an agenda of supporting individual agreements rather than collective agreements, but the government recognise the difficulties for them politically in continuing to put forward that position. It is not working. People are not taking up the AWAs to the extent that the government would like, so here we see the government using another approach. It is an approach that has been described by many—and I support this description of this approach—as blackmail. That is because what they are proposing is to say: ‘We will not give you this money unless you do the dirty work for us, unless you implement our ideological agenda when it comes to industrial relations, because, if we did it, it might create some political difficulties for us. So how about we put you, as vice-chancellors in universities that we have starved for funding so that you are prepared to do so much for us to achieve this funding, in a situation where you only get this funding’—and we are talking about $400 million; we are not talking about anywhere near the $1 billion that the government have taken out of the higher education sector since 1996—‘this little bit of money, if you implement our ideological agenda when it comes to industrial relations?’ That is out-and-out blackmail, and that is not the way to run the higher education sector in this country.

The Greens wholeheartedly support this amendment. We concur with the comments of the vice-chancellors during the committee process to say this is not an acceptable way for a government to make decisions about how it funds our university sector. The Greens support the rights of workers who are in universities, be they general or academic staff, to negotiate with their trade union for the working conditions that they receive at their university. Henceforth, we will be supporting this amendment. I commend it to the chamber.

Senator MURPHY (Tasmania) (6.24 p.m.)—As I said before, the workplace relations issue here is very important. It is not appropriate for universities to have their funding linked to industrial outcomes. DEWR, who are the champions of this cause, are really unable to produce any argument as to why any mechanism ought to be linked to industrial outcomes. I asked them to provide some examples of university certified agreements that precluded the offering of AWAs. They came back with three examples. Two of them were certified agreements at the University of Sydney. One of them related to the Batchelor college in the Northern Territory and, from memory, the words in it were, ‘It is not the intention of the Batchelor col-
lege to offer AWAs.' It just shows you how desperate DEWR are here. The two Sydney agreements that they cited as being present agreements and precluding AWAs had been renegotiated and no longer included the clauses that they referred to. The only reason that those agreements have not been signed off on is that the university is waiting to see what the outcome of this legislation is and whether or not there is going to be a requirement for them to put into the certified agreement a requirement in respect of industrial relations.

DEWR cannot produce one single argument to justify their pursuit of attaching industrial relations outcomes to funding. As I said earlier, I have here a list of universities and aspects of those universities' certified agreements. There is not one of them that does not have all of the flexibility matters that are needed by a university to provide students with the best academic teaching that they can. It was put to us that they need to employ the best and to pay them more, but they never produced a shred of evidence to suggest where this was being stopped. They never produced a shred of evidence to say that somehow the trade union movement has got its hands around the throat of the vice-chancellor and is not allowing him or her to pay more money to people that deserve more money—or, indeed, to pay less money to people who do not deserve more money. None of these things have been justified at all—not one single thing.

DEWR kept coming back to me with sets of words and asking why I have a problem with the words and saying that they don’t really want to require this or that et cetera. This is the dishonesty in DEWR’s approach: they know full well that they would try to put up some mealy-mouthed set of words and that the first thing they would do once they got those words would be to seek a court to interpret them. That is what they would do. That is what is fundamentally wrong with the approach of DEWR. That is why I, for one, will not cop that sort of approach. The lawyers in DEWR are too smart by half.

Universities deserve better treatment than that. We do not say to the AMA or the doctors, ‘For the extra $5 you are going to get for every patient you see, you should put all your staff on AWAs.’ I can just see how the AMA would react to that! We do not say to the farmers when we give money for rural programs, ‘Oh, by the way, we want you to put all your staff on AWAs.’ If you have got an enterprise agreement, we do not say, ‘We want an AWA that takes precedence over your enterprise agreement,’ which is contrary to this act—an act of this parliament. Why they think that we would be so stupid as to allow them to come into this place or to suggest to us—

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

Senator MURPHY—As I was saying before the dinner break, DEWR have been uncovered in respect of their pursuit of the ideology of tying industrial relations to the funding for higher education in this country. As I said, they have not been able to provide one shred of evidence about why you would need to do that. In all of the evidence that was presented to me and to others there was not one thing they could use as justification to support the approach they wanted to take. Whilst I have great sympathy for Senator Carr’s amendment, we have another amendment that will address this question. I have not checked right through the opposition amendments, but I think it is opposition amendment (35) which goes to clause 30-25 on the funding agreements that is similar to the amendment I will be moving to clause
30-25 to ensure that industrial relations is not a requirement for a funding agreement being reached.

The amendment in respect of clause 33-15 that will be moved later is the one that I will support to ensure that industrial relations is not an issue. As I said, I will move a further amendment a little later which will go to clause 30-25 to ensure that, where the agreement may specify conditions, industrial relations will not be a condition that can be specified for the funding agreements.

Senator HARRADINE (Tasmania) (7.33 p.m.)—I will not repeat what others have said on this particular matter. It seems to me that it is a matter of widespread concern if universities are to be required to undertake AWAs with individual employees under the conditions that these AWAs would, to the extent of whatever inconsistency occurred, prevail; whereas, the Workplace Relations Act makes certain provisions in section 170VQ. The proposal as I understand it is that universities may enter into Australian workplace agreements with employees covered by this agreement. Those AWAs may either operate to the exclusion of the certified agreement or prevail over those terms to the extent of any inconsistency as specified in each AWA. The provision is that all certified agreements made and certified after 22 September 2003 are to include a clause that expressly allows for subsequent AWAs to operate in the manner provided for in subparagraph 170VQ(6)(a)(iii) of the Workplace Relations Act 1996. We know what that item is. The Workplace Relations Act is very clear that a certified agreement prevails over AWAs to the extent of any inconsistency if:

(iii) the certified agreement does not expressly allow a subsequent AWA to operate to the exclusion of the certified agreement or to prevail over the certified agreement to the extent of any inconsistency ...

Clearly, that was the intention of the legislation. I agree with my colleague Senator Shayne Murphy that this obviously came from DEWR; it could not have come from the education sector at all. Obviously, the education sector and the vice-chancellors, as well as other people with responsibility in universities, feel that they need to have the trust of their employees. In my view it is important that the AWAs operate in strict conformity with the Workplace Relations Act. In the absence of that clause in any agreement then, of course, the no disadvantage test applies in respect of certified agreements.

Without that, if we go along with what is proposed, we would have a situation where the no disadvantage test only applied downwards, only applied to the award provisions, and would not apply to the certified agreements. Under those circumstances I considered it, as did others, unfair on academic and other staff and that it should be opposed. None of the sector support that proposition, whereas I think it is quite reasonable to require the agreements to include a provision in which AWAs may be entered into with employees pursuant to or in accordance with the Workplace Relations Act. That would put the situation in its proper context: to let the employment relations legislation stand for what it is required to do but not to do so in a fashion that ties it to grants. I am not in a position to agree with that proposal, if it still exists. I make that clear to the chamber.

Senator HARRIS (Queensland) (7.39 p.m.)—I rise to comment on the opposition’s amendment (38) and to indicate to the chamber that this really is one of the major issues in the legislation. I have said very clearly to the government all the way through that unless the linkage between the industrial relations requirements and the funding is severed One Nation will not support the legislation, and I still stand by that.
I am led to believe by Senator Murphy that he has a set of words that will achieve two things: (1) it will uncouple that IR connection from the additional funding and (2) it will allow the universities to continue doing what they have in some cases been doing, and that is offer AWAs. We are looking for some wording from the government that is very simple and cannot be adversely manipulated with regulations or guidelines so that if a university voluntarily offers an AWA they are not required to meet certain prescribed criteria. The wording we are looking for from the government would need to carry the emphasis that universities may offer AWAs in accordance with the Workplace Relations Act 1996—full stop. If there is to be a section in this legislation enabling universities to continue doing what they are doing but at the same time giving some legislative base to it, then there must be a form of words that is very succinct so that we know that the conditions of the Workplace Relations Act 1986 do have effect.

I have a couple of questions for the minister that I would like to seek clarification on in relation to funding. If a university does not have an enterprise agreement in place, will the additional funding still flow? If an enterprise agreement runs out before a new one has been renegotiated or AWAs are effected in its place, will the funding still flow in the interim? We need to know with absolute surety that, irrespective of whether it is an enterprise agreement or an AWA, the additional funding will flow through.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (7.44 p.m.)—I have a suggestion that might assist. I know some varying contributions have been made that focus on this IR issue, and some amendments are being prepared. Would it assist the chamber if we came back to this issue when we have the amendments? I suspect what will happen otherwise is that we will keep talking until the amendments arrive. We could move on and deal with the other things that are quite unrelated and come back to this when we have the amendments. We have a quarter of an hour, and we are all waiting for the same thing. That would mean that we could move on if the chamber were of a mind to accept that—

The TEMPORARY CHAIRMAN (Senator Cherry)—Are you moving that consideration of this amendment be postponed?

Senator VANSTONE—I am not moving it. I am asking the chamber whether it thinks it would be sensible for us to postpone consideration of this amendment until we have the other relevant amendments. If the chamber thinks that is sensible, it might be sensible also to not move on to other similar amendments. Therefore, it would be sensible to postpone consideration of this and related amendments and to move on to Democrat amendment (2), which is completely unrelated to the IR issue, and subsequent amendments. I am inviting the views of the chamber as to whether they think that is sensible.

Senator CARR (Victoria) (7.46 p.m.)—We will have a look at what you are proposing in detail. It is quite clear that there is a degree of filibustering going on here, because we know the cabinet has broken up. Propositions have been considered, as I understand it, and there has been a problem getting the particular words right. Let me ask the Independents to bear in mind a couple of propositions. No-one is talking to the opposition about that, you are right, but do not assume that we will automatically vote for
something that we have not seen. Make sure you have your deal with the government. Make sure it is nice and tight, and make sure it is exactly what you want, because you cannot assume that the opposition will vote for something it has not seen. It might appease your conscience to think you have some sort of sweetheart arrangement there, but make sure it does exactly the work you believe it is going to.

My concern is this. Our amendment goes to the issue of whether or not the grants are conditional. What you are proposing is to leave in this legislation a provision that a higher education provider’s basic grant amount for a year is increased if the requirements based on the workplace relations policies of the Australian government are met. We have not seen your amendments, so we do not know, but those words must come out. Those words cannot remain in a higher education act, no matter what arrangements you have made. It is well known that, through guidelines, things can change but, more especially, the policies of the government can change, which leaves it wide open. Furthermore I would ask you to consider this. On page 37 of the bill, under subdivision 30-C, clause 30-25, ‘Funding agreements’, there appears this expression:

The agreement may specify conditions to which the grant is subject, that are additional to the conditions that apply under Division 36.

This means that the government can impose its industrial relations policies institution by institution if it so chooses and can rely upon that particular clause to provide legal effect. So make sure you get it right. Make sure you understand precisely what it is you are doing, because there are provisions in this bill that have not been removed which give the minister unparalleled, unprecedented discretion. You may say that you have to deal with this particular minister—you may even say you have to deal with this particular cabinet—but if there remains in this bill a proposition that gives a minister of the Crown the discretion to pick and choose in the future you have no protection. The agreement you enter now is only as good as this minister makes it while he remains in office. Under this bill, any minister will have incredible discretion, and that will not change. I would be happy to accept the minister’s proposal to defer this matter, because clearly we are wasting our time. The deal has been done. Get on with it. Let us see what it looks like.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (7.49 p.m.)—I move:

That further consideration of the amendment be postponed.

Senator CARR (Victoria) (7.50 p.m.)—Before you put that question, it is my understanding that Democrat amendment (2) relates to the issue of equity replacement, so it is not unrelated. While we are having this discussion, the opposition has a series of amendments on learning entitlements, which are discrete and separate from industrial relations in all respects and which we wish to divide on, so I would prefer to deal with those matters.

The TEMPORARY CHAIRMAN (Senator Cherry)—The next amendment on the running sheet is Democrat amendment (38). Is that what you are suggesting, Minister?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (7.50 p.m.)—I was going to suggest that. I am trying to find a discrete package, unrelated to IR, that we can move on to. If Senator Carr wants to move to another bunch, I am happy with that.

CHAMBER
**Senator STOTT DESPOJA** (South Australia) (7.51 p.m.)—I am happy to not proceed with Democrat amendment (2) at this stage. I am quite happy to move on to the student learning entitlement, as suggested by Senator Carr. Perhaps Senator Carr could indicate which amendments of his he would like to debate, because the Australian Democrats also have amendments in relation to the student learning entitlement.

**Senator CARR** (Victoria) (7.51 p.m.)—I propose that the committee deal with amendments (7), (39) to (42), (55) to (58), (62), (73) to (74), (77) and (80).

The **TEMPORARY CHAIRMAN** (Senator Cherry)—We first have to dispose of the minister’s motion to postpone consideration of the amendments to a later time. The question is that further consideration of this amendment be postponed.

Question agreed to.

**Senator VANSTONE** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (7.52 p.m.)—I seek clarification. When Senator Carr listed the amendments that he thought should be dealt with together, I heard him say amendments (73) to (74) whereas my running sheet has amendments (73), (74).

Senator Carr—They are the same.

Senator VANSTONE—And since there is no difference between the two it does not matter.

Senator Carr—That’s exactly what I believe too.

**Senator CARR** (Victoria) (7.52 p.m.)—by leave—I move opposition amendments (7), (39), (41), (42), (55) (56), (58), (62), (73), (74), (77) and (80):

(7) Clause 3-10, page 5 (line 21), omit “Chapter 3 also provides for the Student Learning Entitlement.”

(39) Clause 36-10, page 46 (lines 21 and 22), omit paragraph (1)(d)(i).

(41) Clause 36-30, page 49 (lines 13 and 14), omit “that is covered by a person’s Student Learning Entitlement”.

(42) Clause 36-30, page 49 (line 31) to page 50 (line 1), omit “that is covered by a person’s Student Learning Entitlement”.

(55) Clause 65-1, page 70 (line 6), omit “for the Student Learning Entitlement and”.

(56) Clause 65-1, page 70 (lines 8 and 9), omit “A sufficient Student Learning Entitlement is required for a student to access HECS-HELP assistance under this chapter.”

(58) Clause 90-1, page 85 (lines 13 to 17), omit paragraph (d).

(62) Clause 104-30, page 98 (lines 4 to 11), omit subclause (2).

(73) Clause 169-5, page 153 (lines 1 to 11), omit subclause (4).

(74) Clause 169-10, page 154 (lines 5 to 7), omit subclause (5).

(77) Clause 206-1, page 178 (table item 1), omit the table item.

(80) Clause 238-10, page 196 (table item 10), omit the table item.

The opposition oppose clause 36-20 and part 3-1 in the following terms:

(40) Clause 36-20, page 48 (lines 15 to 26). TO BE OPPOSED.

(57) Part 3-1, page 72 (line 2) to page 83 (line 15), TO BE OPPOSED.

The amendments the government is proposing in this area essentially tinker around the edges of the issue of learning entitlement. They do not go anywhere near the serious questions of the means by which we can ensure that people have adequate time to undertake a proper course of study. In fact, the
government’s proposals are about penny pinching and the rationing of higher learning.

The learning entitlement imposes a limit on higher learning. Students will be allowed just five years, as I understand the latest government proposals. We understand that is a moving feast. Is it still five years? I am advised that is now up to seven years for the learning entitlement. Students would be in a HECS place during that period before they would be forced to pay full fees to keep their place at a university. Labor believe that there is frankly no merit in imposing a limit of that type. There are far too many rigidities in a seven-year scheme, which would in fact impose costs on the Commonwealth, would impose inconvenience and would deprive what is on the surface a relatively small number of students. The fact remains that there are very few students that take any period of time over the five years to undertake their course of study.

There are of course specific groups of students, such as multidegree and other types, that meet that criteria, but in the overall scheme of the numbers of students actually at university this program is essentially about corollaring students. It is penny pinching and will require quite a significant administrative burden on the universities. It will have quite serious compliance costs for the universities themselves. It clearly discriminates against mature age students.

Senator Crossin—And women.

Senator CARR—It discriminates particularly against students from disadvantaged backgrounds and, as Senator Crossin has pointed out to me forcefully on numerous occasions, it disadvantages women, particularly those with family responsibilities. I think it makes a mockery of the notion that people should get a fair go. I see this as a considerable threat to the principles of life-long learning. The fact remains that for mature age students, whether they be male or female, there are quite considerable difficulties, particularly family responsibilities, work commitments and the normal pressures of life, which mean that it is not always possible for people to meet nice, tight, neat arrangements in undertaking higher education studies. It is totally unnecessary given the relatively few people who are involved in this. The tracking process that will be required will impose upon the universities quite serious burdens. When we asked departmental officials about the numbers of students involved, referred to as the so-called ‘perpetual students’, we were told that there are virtually none. So what is all this about? It is nothing other than another device to try to impose restrictions upon people’s capacity to actually enjoy the benefits of higher education, and it will be at great cost to the institutions and to the students themselves.

Senator STOTT DESPOJA (South Australia) (7.56 p.m.)—I indicate that we will not proceed with Democrat amendments (41), (42), (45), (62), (66), (70), (93), (111) and (119). These amendments cover this area and seek to remove the student learning entitlement. The Australian Democrats support the opposition amendments before the committee and think they will achieve the same aim. For the reasons that Senator Carr has outlined, we think the proposed student learning entitlement, which restricts the time that a student is entitled to study with Commonwealth support of HECS-HELP, OS-HELP and FEE HELP, is an unnecessary provision. It adds more government red tape, not to mention the administrative requirements that are quite expensive. In fact, Mr Temporary Chairman Cherry, you quoted from the Phillips Curran report entitled Independent study of the higher education review: stage 2, which concluded:
For students who take some time to find their niche, have to discontinue studies for a range of personal reasons, and/or confront challenges in progressing through their courses, the Learning Entitlement scheme may act to restrict their access in the longer term.

Such restriction on access will be exaggerated for disadvantaged students.

So that is at the core of the Australian Democrats’ concern with this amendment and it is a similar concern to that which Senator Carr expressed. The reasons for students taking longer than normal to complete a degree are obviously numerous and varied. They can involve anything from burdensome family expectations, poor career guidance and insufficient maturity at school-leaving age when many people enter the university environment to any number of personal upheavals that are beyond someone’s control.

The student learning entitlement presents many problems to students attempting to retrain or upgrade their qualifications. The fact that we encourage the principle of lifelong learning is often referred to in this place. We also recognise that people’s involvement in the work force changes now, in terms of the amount of time people are in any given profession or career, and a student learning entitlement presents a difficulty for those students who seek to improve on their credentials, upgrade their qualifications or retrain. We suspect that nurses wishing to become midwives, for example, and science graduates wishing to become teachers will all be deterred at the prospect of further interest-bearing loans, particularly those students who may wish to engage in a profession that has a relatively low starting salary—and of course, as a consequence, they are faced with a longer repayment period.

We believe that this scheme is a threat to the concept and the principle of lifelong learning and therefore it should be removed. We will be supporting the amendments in an attempt to do that and, as I have indicated, I will not be pursuing Democrat amendments.

Senator CARR (Victoria) (8.00 p.m.)—Senator Lees, you have a very extensive background in nursing. I think, in the health area, you would be aware particularly of the special demands upon women. I cannot understand why you do not have a better arrangement in place for that, because, frankly, it leaves so many people exposed. I was recently down at the Royal Victorian Institute for the Blind, where the impact that these proposals will have on people with a whole range of disabilities was equally emphasised to me. It strikes me that we really ought to be doing a lot better. I wonder whether or not Senator Lees can enlighten us: how are nurses going to be able to advance, particularly in midwifery, for instance? How are they going to be protected under these arrangements? What particular measures have the Independents been able to secure for those students?

Senator HARRIS (Queensland) (8.01 p.m.)—I would like to direct a couple of questions to the minister relating to the learning entitlement. Minister, from which year do the learning entitlements commence? If a student has accessed HECS, PELS or any other form of government assistance in a course, does that preclude them from this learning entitlement? So, the two questions are: when do the learning entitlements commence, and does a student who either is part-way through or has completed a degree—including a postgraduate or honours degree or something like that—and has accessed funding for that still have the full entitlement?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assist-
The answer to Senator Harris’s questions is that from 1 January 2005 all Australians, regardless of previous study, get the student learning entitlement. There are a few other things I would like to say, apropos of some remarks made earlier by Senator Carr. I do not want to delay the committee here, but some things do need to be responded to.

It needs to be understood that the student learning entitlement is structured so that Australian government funds for tertiary study are shared more equitably across the community. It will provide greater opportunities for more students to gain access to a Commonwealth-supported higher education place, as new entrants will be able to occupy places freed by students who have consumed their entitlement. Under the government’s amendments, the ordinary SLE provides students with a Commonwealth-supported place for the equivalent of seven years of full-time study. Where a student is enrolled in an undergraduate degree which is longer than six years, they will be granted additional SLE to ensure they will be eligible for a Commonwealth-supported place for the duration of their course plus one additional year. That will be specified in the guidelines. The guidelines will be a disallowable instrument. The first draft of these guidelines will be publicly available next month and will clearly show how courses such as graduate entry medicine or double degrees with honours will all be covered through the additional SLE provisions.

I might add, for clarity, that students who are studying part-time or who formally defer their studies will not be disadvantaged. Students who study part-time will automatically be Commonwealth supported longer than the full-time student. For example, a student with a seven-year SLE who chooses to study at half the pace of a full-time student would have access to a Commonwealth-supported place for 14 years. Students who formally defer their studies for a period of time will not consume their SLE during the period of deferral. There are no time limits in which students must use their SLE. I think that makes it pretty clear that the Commonwealth is committed to lifelong learning. It has also introduced a lifelong learning student entitlement which will accrue over the lifetime of individuals.

Senator HARRIS (Queensland) (8.05 p.m.)—Thank you, Senator Vanstone. On the same issue, I would like to seek some clarification from Senator Vanstone in relation to Open Learning Australia students studying undergraduate units. This is directly from Open Learning Australia, from the Manager, Strategic Projects. I will quote from it, because I think it puts it succinctly:

It is not at all clear from the minister’s statements whether OLA students will continue to be treated fairly. Currently, the same repayment conditions apply to PELS and OLDPS— that is the Open Learning Deferred Payment Scheme for students— so an administration fee for OLA students studying undergraduate units would be a significant detraction from existing arrangements. Currently the OLA fee for an undergraduate student is $435 and a student receiving OLPS pays $68 up-front and OLDPS covers the remaining $367. If the new fee applies, students would face a total cost of $522.

The question to the minister is: will a student who is participating in the open learning scheme and is currently part of the Open Learning Deferred Payment Scheme be disadvantaged under this government proposal?

Senator VANSTONE (South Australia— Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (8.07 p.m.)—The Open Learning Deferred Payment Scheme will be subsumed into the
new FEE-HELP program. Only postgraduate students get a loan now. Currently, OLDP students cannot borrow the entire amount of their fee. Under the new arrangements they can borrow all of their fee. Under the government’s amendments the 20 per cent loan fee will apply to undergraduate students, not postgraduate students.

Senator NETTLE (New South Wales) (8.08 p.m.)—In rising to speak about the student learning entitlement, I indicate that the Australian Greens will support the proposals put up by the opposition on the student learning entitlement. I will read out, as Senator Stott Despoja did, the amendments from the Australian Greens pertaining to the same issue which I will not proceed with. They are Australian Greens amendments (5) to (8), (10) to (13), (16), (24) and (25).

The student learning entitlement is one of those mischievous pieces of phrasing that we see so often coming from this government. It implies that there is some wonderful gift that is to be received by those who are willing to better themselves through higher education. It sounds as though the government is handing out some learning or is endorsing the right to study. The way the government puts it sounds marvellous but of course it is a con. The learning entitlement is an entitlement to borrow money from the government. That is what it is. What is more, it is a limited entitlement to this credit access. The proposal in the bill really says: ‘If you want to be a student, we’ll lend you the cash to pay for it, but only if you finish your degree in record time. There will be no second chances and no time to smell the roses. One strike, you’re out.’

Student learning entitlements are about saving the government money at the expense of student equity and campus life. There is no student equity in the Student Learning Entitlement scheme because the scheme discriminates against those students who, for perfectly understandable reasons, may struggle to finish their degree in the shortest possible time. I am talking, as others have, about young parents, Indigenous students, mature age students, carers, student representatives and student leaders who have important but unpredictable demands on their time, which means they cannot always keep up with the demands of their courses as easily as other students may be able to.

The introduction of the student learning entitlement is also a blow to second-chance students who may have had an earlier course of study interrupted in their life and later seek to get a degree, perhaps in another area, but who find that their entitlement now does not cover them to the end of their course. These students are instead faced with huge up-front fees if they want to graduate.

The attack on student life will be one of the noticeable effects of the student learning entitlement measure coming onto campuses. Australian university culture is based on the active participation of students in their democracy, in the running of their universities and in participation in public debate. The commitment of those in positions of leadership or those who are otherwise heavily involved in these vital aspects of university life tends to lead to slower completion of their courses. The introduction of the student learning entitlement will not allow this flexibility and will effectively stifle the broader education.

Many people in this chamber would be aware, from their own personal experiences, that engaging in a whole lot of activities—often extracurricular activities at university—allows people to have that broad experience of university and to engage in university life. I am sure that, for many people
in here, the skills, experience and knowledge that they gained from engaging in those sorts of activities has helped them tremendously in being able to contribute, to give back to their community and learn about the responsibilities of being a representative. Perhaps sitting on the board of a university council or a university senate as a representative of student voices in those forums has enabled them to understand the value of participating in and giving back to the university community and to go on in life to give back to their local communities.

These are all things that people have experienced and that potentially have meant that they had to spend a longer time at university. Perhaps they studied part time or perhaps they took an additional year. These are just some examples that people in this Senate might be familiar with in terms of people’s experiences at university. We have heard from other senators about the impact this has on women, mature age students, people with young families, people with carer responsibilities or Indigenous students who have family commitments elsewhere which mean they have to take time out of their study. There are so many examples of people who will be impacted by the student learning entitlements.

This is not an entitlement; this is not a gift or the government saying: ‘Here, go study.’ This is the government saying: ‘Here, have this debt. We’ll lend you this money and then you can pay it back to us, but only if you go through your degree as quickly as possible and you don’t engage in that broader context of university or that comprehensive education that public universities can provide.’ For these reasons we do not support the student learning entitlement. We will be supporting these amendments, which seek to remove this restrictive barrier on students’ capacity to engage holistically in university life and in the university experience.

**Senator LEES** (South Australia) (8.14 p.m.)—I do not want to prolong this debate any more than is necessary, but there are a couple of things that Senator Nettle has said that I must respond to. Many of those who are active in student unions—and I congratulate them for being involved in campus life—have indeed made a conscious decision to go part time. From listening to Senator Nettle, one suspects that perhaps students have to fail and, effectively, drop out in order to do these things. They do not. Indeed, many of those who are very active and make a major contribution to campus life manage to balance that with achieving credits and higher grades. If students consciously decide that they need a break then they take leave. That does not count towards their entitlement. The entitlement is ticking over only when you are actually there and studying. If you wish to study part time or you are a student with a disability who can only study part time then your learning entitlement only accrues part time. So I have to disagree with Senator Nettle that somehow the learning entitlement will prevent people from being involved in other activities or will limit their participation in university life.

**Senator NETTLE** (New South Wales) (8.16 p.m.)—I might give an example to Senator Lees from my own experience in these issues, which derives from a time not that long ago. In order to be able to engage as a representative of the student body, one needed to be enrolled as a student to fulfil that responsibility. I agree that people can do it in different ways. Sometimes people can go part time, but I am not sure that they have the option of taking leave. Those are the circumstances I know about. I do not know whether they are different at other universities. To engage and to represent students, one needed to be enrolled as a student. Therefore, the learning entitlement would tick over in the time during which people were choosing
to be enrolled but also to engage in student life.

Question put:
That the amendments (Senator Carr’s) be agreed to.

The committee divided. [8.21 p.m.]
(The Chairman—Senator J.J. Hogg)

Ayes……………. 31
Noes……………. 33
Majority………. 2

AYES
Allison, L.F.
Bishop, T.M.
Brown, B.J.
Campbell, G.
Cherry, J.C.
Conroy, S.M.
Evans, C.V.
Greig, B.
Hutchins, S.P.
Ludwig, J.W.
Mackay, S.M.
McLucas, J.E.
Nettle, K.
Ray, R.F.
Stott Despoja, N.
Wong, P.

NOES
Abetz, E.
Boswell, R.L.D.
Calvert, P.H.
Chapman, H.G.P.
Coonan, H.L.
Ellison, C.M.
Ferris, J.M. *
Harris, L.
Hill, R.M.
Johnston, D.
Macdonald, J.A.L.
McGauran, J.J.J.
Murphy, S.M.
Payne, M.A.
Scullion, N.G.
Troeth, J.M.
Watson, J.O.W.

PAIRS
Cook, P.F.S.
Denman, K.J.
Faulkner, J.P.
Moore, C.
Sherry, N.J.
Stephens, U.

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN
(Senator Cherry)—The question is that clause 36-20 and part 3-1 stand as printed.

Question agreed to.

Senator CARR (Victoria) (8.24 p.m.)—by leave—I move opposition amendments (43) and (60) on sheet 3209:

(43) Clause 36-35, page 50 (line 21) to page 51 (line 13), omit the clause, substitute:

36-35 Percentage of Commonwealth supported places to be provided by Table A providers

(1) A *Table A provider must ensure that, in any year, the *number of Commonwealth supported places provided by the provider accounts for 100% of the total number of places that the provider provides in each undergraduate *course of study.

(2) For the purposes of calculating the proportion of Commonwealth supported places in subsection (1), international students and students who are not *Commonwealth supported students and were enrolled before 2004 are to be disregarded.

(3) For the purpose of applying subsection (1) in relation to a *course of study, disregard any enrolment in *work experience in industry or in an *employer reserved place in that course.

(60) Clause 104-1, page 94 (line 4) to page 95 (line 9), omit the clause, substitute:
104-1 Entitlement to FEE-HELP assistance

(1) A student is entitled to FEE-HELP assistance for a unit of study if:

(a) the student is enrolled in a postgraduate course of study or a course of study with Open Learning Australia; and

(b) the student meets the citizenship or residency requirements under section 104-5; and

(c) the student’s FEE-HELP balance is greater than zero; and

(d) the census date for the unit is on or after 1 January 2005; and

(e) the student is not a Commonwealth supported student in relation to the unit; and

(f) the unit meets the course requirements under section 104-10; and

(g) the unit:

(i) is, or is to be, undertaken as part of a course of study; or

(ii) is a unit access to which was provided by Open Learning Australia; or

(iii) is part of a bridging course for overseas-trained professionals; and

(h) the student:

(i) enrolled in the unit on or before the census date for the unit; and

(ii) at the end of the census date, remained so enrolled; and

(i) the student meets the tax file number requirements (see section 187-1); and

(j) the student has, on or before the census date, completed and signed a request for Commonwealth assistance in relation to the unit, or in relation to the course of study of which the unit forms a part; and

(k) the student has not been precluded from receipt of the FEE-HELP assistance because of section 107-15.

The purpose of opposition amendment (43) is to abolish domestic undergraduate up-front fee paying and remove ministerial discretion. Amendment (60) goes to the issue of limiting fee help to postgraduate students. These amendments seek to correct a drafting error that meant that a 50 per cent cap on fee payers would also apply to overseas fee paying students. Amendment (43) goes to clause 36-35 of the original bill which, as the government has acknowledged, contains drafting errors.

When these provisions were first released, it was apparent that vice-chancellors were clearly shocked by the proposition put forward. It was revealed through the Senate committee that the provisions as they currently stand would allow the provision of courses for full fee-paying undergraduate students to be restricted for international students, as well as for those applying for a whole range of other courses. Frankly, I could not believe that the government had intended for that to occur, particularly given the manner in which the bill was written. In essence, the committee process was able to point out that there were a number of drafting problems. It is important for the chamber now to correct those drafting errors and help establish a category for domestic fee paying students which protects them from government errors.

Senator STOTT DESPOJA (South Australia) (8.26 p.m.)—The Australian Democrats support this attempt by the Australian Labor Party, but it is our second preferred position. Given the chance—and we have amendments that seek to do this—the Democrats would remove all fee paying places in so-called ‘public’ Australian universities. We believe that access to university educa-
tion—and publicly funded higher education—is crucial, particularly in overcoming systematic disadvantage. We have said repeatedly that it should be available regardless of your background—regardless of your age, sex, health, socioeconomic status, racial background, ethnic origin, place of residence, religion, ability or disability.

We believe that education is an investment, not a cost. Your access should be based on your brains, not on your bank balance. From an economic perspective, we also note that it is an investment that returns 11 per cent to the government on their outlay. That is the result in a report by the Melbourne Institute of Applied Economic and Social Research—a report by David Johnson and Roger Wilkins entitled *The net benefit to government of higher education: a “balance sheet” approach*. So if others cannot appeal on the basis of principle and democracy and enlightened citizenry, we will appeal on the basis of a balance sheet and economics.

I will pre-empt and speak to the Democrats amendments now, so we get aspects of this debate dealt with. Our amendment would make all students Commonwealth supported, including those undertaking postgraduate course work, undergraduate full fee paying students and international students. The estimated cost we have for this is $595 million per annum. The estimated cost in relation to the abolition of domestic undergraduate fee paying places would be around $45 million per annum. Students should be able to access higher education because it is an investment in their future and it is a community benefit, not because of what they earn or how much their parents make.

The issue at the heart of this is that higher education plays a fundamentally important role in our society, particularly in our nation, and it should not be left to students to shoul-der the burden of financing this particular benefit to the community. The massive cost shifting that this legislation will bring about is something that has not been sufficiently focused on—the massive changes to students’ debt levels and the consequences that that will have for a range of aspects of their lives, not just the repayment arrangements but their access to other loans, a mortgage, purchasing a house, even fertility rates apparently as some people delay having children as a consequence of wanting to either pay off debts or not incur further debt before they provide for a family. We do not believe that we should leave university education in our public universities to blunt market forces. The future growth, prosperity and independence of our universities should be ensured through effective university funding and management.

We believe it is inequitable for students to be buying a place within a university, particularly if that has an impact on quality. We all know of the issue about students buying a place, particularly if they have, say, a lower tertiary entrance score than someone who may have had a HECS liable place. It is well known that some institutions have actually dropped their entry requirements to encourage full fee paying student enrolments. Thus there will be students in courses with lower entry scores than students who missed out. We do know this is the case and we also understand why universities do it: because universities are increasingly reliant on this funding.

Having full fee paying students also opens a Pandora’s box of potential problems which include, as I mentioned, that this policy does favour richer students as opposed to poorer students. Then there is the problem of universities spending money on marketing to attract more fee paying students rather than
We know that a lot of that additional funding that has been flowing into universities tends to go on these marketing disciplines and core elements of teaching and research. The focus shifts from academic excellence to the search for funding—instead of the search for truth there is the search for funds. There is even the issue of students taking legal action against the university if they do not get the desired results and staff marking fee paying students softly to avoid some of these problems. All of our offices and certainly our committee have heard instances of these issues and, increasingly, these dilemmas.

I do not mean to sound less than enthusiastic this evening. I am very keen to see an amendment such as ours or, as a second-best position, Senator Carr’s, pass the parliament, but I feel sad that this aspect of the legislation has not met with the same degree of opposition as the IR aspects have; and, believe me, I have been a strong opponent of that link between industrial relations and governance changes and additional funding. I am equally angry and upset about the huge changes that we are going to see in fees and charges at institutions around the nation as a consequence of this legislation being passed.

At UWS they have calculated that the additional fee-paying costs on the heads of students at UWS over a year, if the university increases its courses by up to 30 per cent HECS, are around $33 million. That is a lot of money for that particular area and that community: $33 million additional HECS debts for the students of that region. It is a region that we already know is particularly disadvantaged and a multicampus institution that we know is going to experience a decrease in funding.

We should not get carried away with some of the allusions that were made before the dinner break. I am referring to comments by Senator Harradine that prompted some of us to think that somehow there had been an arrangement entered into that would look after those institutions. That is when we were debating Democrat amendment (34), what I called the security blanket amendment, the one that ensured that no university would be worse off. Everyone who opposed that amendment was assuring us that it would not be required because the funding arrangements or the new framework would ensure that those universities were not worse off. As we were having that debate, my office spoke to the Vice-Chancellor of UWS, who assured me that there was no new money for UWS, no special deal whatsoever, no new arrangement, nothing in the last couple of hours. For a minute there, through you, Mr Temporary Chairman, to Senator Carr and Senator Nettle, I think we were all getting a little excited that maybe something had gone on that we did not know about. Nothing has gone on, and UWS is going to be as disadvantaged—

**Senator Carr**—Left in the lurch.

**Senator STOTT DESPOJA**—Left in the lurch. They are in the same situation now that they were in when this legislation was introduced, and that is a shame. No wonder senators were not brave enough to vote for a ‘no worse off’ clause. No wonder they were not prepared to support an amendment that would have been a back-up, that would ensure that those institutions like VCA, VUT, UWS—you name it—were not worse off.

I commend the Labor Party amendment before us. I prefer the Democrat amendment but I can read the numbers on both the amendments. I do not know whether Senator Nettle has a ‘third time lucky’ amendment, but I think by now Senator Nettle would have worked out that third time was not
lucky. The first and second times have not been so great either. As I say, I really wish for the issue of fees and charges to become central again to this debate. The 1996 changes were bad enough, but these changes will change lives. I know that a lot of people in this place can look at the detail and talk about the figures and pretend that these token scholarships are going to make it okay, but let us not fool ourselves: there are poor families, middle-income families and disadvantaged families out there whose decision to go to university will be affected and will be changed as a consequence of the passage of this legislation. I know some senators do not believe that but you can bet that is going to happen. We already know of cases where mothers are studying. There have been a lot of emails in the last couple of days saying, ‘If it is a choice between me and my child studying, that is the way it’s going to go.’ It will change lives. In that respect I hope that at a minimum we can pass this amendment tonight.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (8.36 p.m.)—I have just a couple of points. I think I can clarify the difference between the government and Senator Stott Despoja in relation to these matters. Firstly, I do not understand that you can get into Harvard without paying some fees and I do not hear anyone querying the academic excellence pursued by that university. That is all that needs to be said about the association between academic excellence and whether or not fees are charged.

The second thing I would like to say is that it used to be a chant of the Left, and people like the Democrats, to say, ‘Make the rich pay.’ Here you have a circumstance where we are happy to let them pay and you simply will not come at it. I make that point as well. Senator Stott Despoja says that our universities will take away money that they are spending on students to put into marketing programs to attract fee paying students. They might put money into attracting fee paying students. Why? Because when they get fee paying students, they will have more money to spend on other students. But since Senator Stott Despoja, as best I know, does not have experience of the business world, she may not have figured that aspect out.

Last but not least, the credible point to make here is that every time someone moves out of a HECS funded place to go into the degree of their choice, and they choose to pay fees to get to the degree of their choice, a government funded place is vacated and a new student, who otherwise would not get in, gets in. The situation is that someone, such as Senator Stott Despoja, would sit inside the university gates and say: ‘We’re the lucky ones that, by the lottery of our university entrance score, got in. Bad luck to you; you’re a couple of points behind. We’re not going to let a number of these people here who could pay for the degree of their choice pay for it and vacate a government place so that you can have it. You can all shove off. You’re not as bright as us.’ That is basically Senator Stott Despoja’s view.

I think it needs to be understood that—this was the case back in 1996 or 1997; I am not sure if it is still the case now, but the point remains valid—a score in the very high nineties was required to get into law at either of the universities in New South Wales. But at the time they did have solicitors admission arrangements, and I think the score you had to get there was under 60, with a few other requirements. What does that tell you? It tells you that to do law, to be capable of practis-
ing, you do not need to have a score as high as 90 something. That score is simply there as a means of rationing places. It has no relationship with the level of score you might need or that might reflect the intelligence you need to complete the degree. So let us not kid ourselves that people who get lower scores than TER scores are too dumb for university. That is simply not true and it is a very elitist attitude that the Democrats are taking. The cut-off points are simply a distribution of existing places and nothing more. I very strongly believe that, if there are people who are prepared to pay for a place and let a kid who otherwise would not get in get into a government funded place, we should be encouraging it.

Senator NETTLE (New South Wales) (8.40 p.m.)—I might pick up on the idea that the minister has been talking about that, by moving people on to full fee paying places, we are freeing up HECS places. I would like to describe to the minister the situation that is currently occurring with up-front domestic full fee paying places. But I will not describe it in my words. I will describe it in the words of a university academic from Melbourne, who sent an email to my office about this issue and about what was going on in relation to up-front full fee paying domestic students at his university for courses that he is involved with. He states:

The debate on full-fee paying students in higher education has assumed that there are full-fee paying students who pay full fees for the duration of their course and another group of HECS paying students who pay HECS throughout their course. But I will not describe it in my words. I will describe it in the words of a university academic from Melbourne, who sent an email to my office about this issue and about what was going on in relation to up-front full fee paying domestic students at his university for courses that he is involved with. He states:

The debate on full-fee paying students in higher education has assumed that there are full-fee paying students who pay full fees for the duration of their course and another group of HECS paying students who pay HECS throughout their course. This is not the case.

Current arrangements in place at Monash University (and in other universities) allow full-fee paying students to switch to HECS places in their second year (subject to satisfactory performance). Hence full-fee paying students leap-frog the VCE/HSC entry requirements and then obtain a subsidised place in their second and subsequent years. The result is that qualified students are denied HECS places in their first year.

The government has claimed basically that expanding the number of full-fee paying students has no effect on current arrangements—it only allows some extra students to enrol who would not otherwise have been able to study. This is not true.

If universities respond to the new legislation as they already have to their existing opportunities to enrol full-fee paying students, there would be almost no HECS places available for first year students in (say) law. All the HECS places would be allocated to second and later year students. All (or almost all) first year students would be full-fee paying. The potential impact on access to, and equity in, higher education is enormous. Such arrangements already exist in one course I know of at—

and he states his university. He goes on:

Why would universities respond in this way? It lowers the price charged to so-called full-fee paying students. It’s hard to find families willing to pay (say) $100,000 for a four year course, but much easier to find families willing to pay $25,000 for the first year only.

It is therefore a misnomer to talk of full-fee paying students under the proposed legislation (or current arrangements). Instead, there will be a substantial expansion of mix and match students—students whose course will be partially funded by HECS and partially funded by fees. On my understanding, almost all students could be enrolled on this basis.

One aspect of the equity consequences of these proposed changes is the potential to almost completely undermine entry on the basis of merit. Students would essentially be paying for entry to the course and access to later-year subsidised places.

Perhaps the minister would like to respond to the situation at universities now and their capacity to charge full fee paying students in a mix that they feel is appropriate to get the outcomes that they want in terms of the students coming on board and the finances coming into the student budget. That is what we
are seeing now, and the government is proposing to increase the number of full fee paying domestic students. There are no arrangements that I am aware of. Perhaps the minister could point out anything that stipulates that people need to be on a HECS or a full fee paying course for the course of their degree. My understanding is that the institutions can make those determinations based on the mix that they want of students and income coming in. We are already seeing a different pattern occurring at universities now to the one that the minister described. Why, by expanding the number of full fee paying students who are allowed into Australian universities, would we see a different situation with any better outcomes for student equity than we are already seeing?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (8.45 p.m.)—It is a long time since I was at university, so I won’t bother with the university debating club style debate tonight—we would be here for a long time. I will make two points. The first is that a student who gets a HECS place is guaranteed a HECS place for the duration of their course, so any changes the universities make in later years do not affect any HECS student who has a place and proceeds. They have attrition, people drop out—probably the sort of people the senator was referring to who drop completely out of being a student so they can represent students, which I thought was something of a misnomer, which had a slight air of fascination for me earlier in the night but that has now thankfully left me. Let me make the first point clear: a person who gets a HECS place has it for the duration of their course.

The second point is that I think the senator is trying to say a kid who, by whatever means, got the money together and paid for a place should not have the chance of competing for a government funded place later in life. So the senator’s proposition is that your TER score—if that is what they still call it—when you leave year 12 should predetermine the rest of your university opportunities. Well, we do not agree with that. If you can better yourself, if you can demonstrate merit to the university’s satisfaction, you should be able to do so.

Question put: That the amendments (Senator Carr’s) be agreed to.

The committee divided. [8.51 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes…………… 30
Noes…………… 32
Majority………. 2

AYES
Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Bolkus, N.
Brown, B.J.  Buckland, G.
Campbell, G.  Carr, K.J.
Cherry, J.C.  Collins, J.M.A.
Conroy, S.M.  Crossin, P.M. *
Evans, C.V.  Forshaw, M.G.
Greig, B.  Hogg, J.J.
Hutchins, S.P.  Kirk, L.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  McLucas, J.E.
Murray, A.J.M.  Nettle, K.
Ridgeway, A.D.  Stott Despoja, N.
Webber, R.  Wong, P.

NOES
Abetz, E.  Barnett, G.
Boswell, R.L.D.  Brandis, G.H.
Calvert, P.H.  Campbell, I.G.
Chapman, H.G.P.  Colbeck, R.
Coonan, H.L.  Eggleston, A.
Ellison, C.M.  Ferguson, A.B.
[Senator CARR](Victoria) (8.53 p.m.)—I move opposition amendment (59) on sheet 3209:

(59) Clause 93-10, page 88 (line 1) to page 89 (line 5), omit the clause, substitute:

93-10 student contribution amounts per place

The student contribution amount per place for a unit of study is that referred to in the following table:

<table>
<thead>
<tr>
<th>Item</th>
<th>Funding clusters</th>
<th>Student contribution amount per place</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Law</td>
<td>$6,283</td>
</tr>
<tr>
<td>2</td>
<td>Accounting, Administration, Economics, Commerce</td>
<td>$5,367</td>
</tr>
<tr>
<td>3</td>
<td>Humanities</td>
<td>$3,768</td>
</tr>
<tr>
<td>4</td>
<td>Mathematics, Statistics</td>
<td>$5,367</td>
</tr>
<tr>
<td>5</td>
<td>Behavioural Science, Social Studies</td>
<td>$3,768</td>
</tr>
<tr>
<td>6</td>
<td>Computing, Built Environment, Health</td>
<td>$5,367</td>
</tr>
<tr>
<td>7</td>
<td>Foreign Languages, Visual and Performing Arts</td>
<td>$3,768</td>
</tr>
<tr>
<td>8</td>
<td>Engineering, Science, Surveying</td>
<td>$5,367</td>
</tr>
</tbody>
</table>

This matter relates to two government amendments dealt with earlier in the evening, (62) and (63), but essentially removes the capacity to increase fees by what is now 25 per cent. This amendment, if carried, would prevent HECS fees from rising by that amount and it, of course, goes to the heart of many of our concerns about the nature of this legislation. Labor remain opposed to the increase in the fee burden being carried by students. Under the Howard government’s debt arrangements for students, we see that HECS debts are now up to $9 billion. They are projected to be up to $13 billion over the next three years. To increase the debt burden on students will make life particularly difficult.

The average fees being paid under HECS have increased dramatically. In the OECD Australia is now the fourth most reliant upon private income in its contributions towards higher education. Korea, the United States and Japan are all more reliant on private income, but we are in the big league with regard to the levels of debt burdens for individual students. If we look at the international comparisons, we can see that Australia is amongst the league leaders in terms of the cost of studying as well. We are proposing that that matter be dealt with by not imposing these 25 per cent fee increases.

Further, this amendment will prevent future ministers altering the rates by which fees could be increased, because what we see in our reading of the bill is that there are ample opportunities for a future government to actually change the rate of increase. This is not
prevented by any of the amendments that we have seen to date. A number of vice-chancellors and prominent academics who work in this field, such as Professor Bruce Chapman, pointed out to us that, once the universities start the process of increasing fees by 25 per cent, there will be a knock-on effect which will force just about all of the universities to follow suit. We will be in a situation where Australia will be not amongst the highest but the highest in terms of the costs of undertaking education.

It is a dubious distinction which I think most senators would want to avoid, although I would be very doubtful as to whether the majority of senators are prepared to take the necessary steps to prevent that happening. It is quite clear that, with respect to the arrangements that have been made, the terms of the agreement, as I said earlier on, are such that Independent senators are locked in to the government’s programs, irrespective of the merits of any opposition amendments. This is another amendment on which we are seeking to divide, which I think will demonstrate yet again the nature of the arrangements that have been made.

Senator NETTLE (New South Wales) (8.57 p.m.)—I will take this opportunity to speak to an amendment the Australian Greens have which goes to the same issue as this opposition amendment (59). In having the debate at this time, I will speak about that particular amendment. The purpose of that amendment, and also this amendment by the opposition, is to remove one of the two key elements of the government’s move to shift the cost of providing higher education onto the shoulders of students and their families. The other move, of course, is the one we just voted on—increasing the number of full fee-paying domestic undergraduate students that can be at Australia’s public universities.

Of course, people in this chamber are well aware that the Greens have a long-held position of not supporting the current HECS system and of moving us towards a fee free tertiary education system—a choice that, as we pointed out at budget time, the government could have made by redirecting the $4-a-week ‘milkshake and hamburger’ tax cuts to abolish HECS rather than deciding to do what the government is proposing in this legislation: to increase the HECS payments that students are making by 25 per cent. That is a clear priority decision that has been made by the government not just at the last budget but throughout the time in which it has been in government.

The Greens amendment and the opposition amendment that we are debating at the moment are part of showing the government a direction that they could be moving in—a direction that they could take within the current legislative framework and within this legislation—because the measure, as put up by opposition parties, retains the current level of HECS, albeit in the new formula, as dictated by the Commonwealth Grants Scheme, that is set up in this legislation. The Greens do not necessarily agree with this formula of the Commonwealth Grants Scheme and we do not agree with fees, but these amendments are put up in the context of this legislation to deal with the government’s proposal to increase student fees by 25 per cent. This measure must, of course, be made in tandem with measures to increase funding to universities, which we have dealt with earlier in this debate. Those measures must come directly from the Commonwealth so that they can address the serious resource pressures that seven years of underfunding under this government have resulted in for universities.
The opposition parties’ amendments also note strong anecdotal evidence that students who are willing to pay full fees are being enrolled at significantly lower academic scores—even at TER scores five points lower than the current HECS place requirements. Not only are HECS places being lost in second and third years, as illustrated in the previous debate, but also those squeezed out in first year by full fee-paying students are being displaced by a cohort of cash applicants who do not necessarily achieve the same academic standards. There has been some talk about the introduction of full fee places filling lecture theatres with the dumb rich, which of course would be a bad outcome. But what may also happen is that the temptation of an easier route to university may lure many families who operate on very modest means and who have a keen desire to send their children to university into entering a cycle—a lifetime—of serious debt.

I return to the example of the University of Western Sydney. I have spoken to the vice-chancellor about her experiences going to graduations and speaking with students of working-class families whose parents have moved from overseas. The examples she told me about were of students who had come with their families from Vietnam. Those families had given up tremendous opportunities elsewhere to put everything they could—every resource and every capacity to earn income—into their child’s ability to go to university. They are the sorts of families who potentially, having no other way to provide opportunities for their children to go to university, could put a noose around their necks of a lifetime of debt for themselves and their children by trying to scrabble together the money to pay full fees to get their children into universities. It may well be that the people who are able to access university are a mixture of people who come from wealthy and privileged backgrounds and who have the money to hand over to enter universities, and families who scrabble together the money and tie themselves to a lifetime of debt—a debt burden they are simply unable to meet during their lifetimes or even those of their children.

We could see this being one of the ways in which the money that will subsidise those who may have got better marks by virtue of a lavish private school education will be obtained. Also, we may see students from hard-up families being sucked into the debt trap that this government is proposing. These are the consequences that we will see come out of student fees increasing by 25 per cent. They are consequences that we are already seeing with full fee-paying places being made available at universities. This chamber has voted to increase the number of full fee-paying places, and now this is about increasing the payments that those in HECS places have to make for a university education. The Greens will be supporting the amendment put up by the opposition. The Democrats and Greens amendments will seek to address the same issue.

Senator STOTT DESPOJA (South Australia) (9.04 p.m.)—The amendment moved by Senator Carr will be supported by the Australian Democrats. It mirrors Democrat amendments (72) and (74), which also relate to student contributions. Obviously, as we have indicated earlier, our concern is in relation to user pays. Minister Nelson initially indicated that he would allow for 30 per cent increases in HECS; now that has been amended, but only slightly. The universities—in particular, a number of Go8 universities—have already indicated that they will certainly take advantage of this new so-called flexible policy and they will indeed be increasing fees in relation to HECS.

We have already seen incremental increases in HECS over the years. There was
an above-CPI increase in 1991. There was the total distortion of the HECS system in 1996, with the introduction of a three-tier system, an increase in the amount that students paid, a lowering of the threshold at which they began to repay their HECS debts and an increase in the percentage that they paid. A lot of people said back in 1986-87, in the debate on the HEAC and HECS bills, that that would be the thin end of the wedge. At that time, the Labor Party laughed at them. It was the thin end of the wedge, because it has just got worse. There have been incremental increases, as I have indicated. The Democrats did not want to see the entrenchment of user pays, but we certainly do not want to see this continuation of HECS increases. The HECS increases outlined in the legislation mean that students will pay, on average—certainly, initially, based on the 30 per cent increase—anywhere between 44 per cent and 56 per cent of the cost of their tuition. In some cases, people are paying more than the cost of their course. Clearly, that is not a ‘contribution’ scheme.

Evidence of this cost shift can be found in the 2003 OECD report *Education at a glance*, which found that, between 1995 and 2000, Australia’s public investment in universities declined by 11 per cent—more than in any other country in the OECD—while the average OECD growth was 21 per cent. As some senators would know, the architect of HECS, Professor Bruce Chapman, told a Senate inquiry that government funding for higher education had fallen from 85 per cent in 1987 to just over 45 per cent in 2002. But still Minister Nelson insists that the government is paying 75 per cent of course costs, which is clearly not the case. At the same time, student fees have doubled. Fee paying undergraduate places have been introduced and, as we know from DEST figures, student debt is $9 billion.

This is not an appropriate measure. In an attempt to redress that, the Democrats will be supporting the Labor Party amendments, and I will move my amendments on HECS in a block at some stage and I am happy to outline the specific amendments. I want to put on record that we are trying to facilitate this debate in a way that gets some discussion of the issues but also gets amendments dealt with en bloc and quickly. We have been doing that, preferably with minimal personal interjection or offence, but if people want to dish it out—whether it is that I am a leftie throwback, that I do not have business experience or what have you—I am big enough and ugly enough to take it. But I do know higher education policy and the Higher Education Funding Act. Senator Vanstone and I have faced off on this issue before when she had the job of education minister. I did not like the changes in 1996 and I do not like these any more. In fact, I do not like them at all, and that is why I will move those amendments later on. If you would like me to indicate what amendments they are I can do so. I will still pursue those amendments in an attempt to stop what the Democrats perceive as a regressive measure.

Question put:
That the amendment (Senator Carr’s) be agreed to.

The committee divided. [9.13 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes………….. 31
Noes………….. 33
Majority…….. 2

AYES

Allison, L.F. Bishop, T.M. Brown, B.J. Campbell, G. Cherry, J.C.
NOES
Abetz, E. Barnett, G.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Ferguson, A.B.
Ellison, C.M. Harradine, B.
Ferris, J.M. Heffernan, W.
Harris, L. Humphries, G.
Johnston, D. Lees, M.H.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. Minchin, N.H.
Murphy, S.M. Patterson, K.C.

* denotes teller

Amendments (75) and (76) go to the issue of a realistic measure of indexation for university grants so as to ensure the quality of the system. As we discussed earlier today, there has been some talk from the crossbenches that some great prize has been won as a result of a commitment to a review. I indicated earlier that, as far as the opposition is con-

198-20 Meaning of index number

(1) The index number for 2004 is the Cost Adjustment Factor which is:
AIRC Safety net Adjustment as a proportion of Average Weekly Earnings
x 0.75 + Consumer Price Index (Australia) for the reference date x 0.25
Consumer Price Index (Australia) for the September immediately preceding the reference date

(2) The index number, for a year that is 2005 or later, is the Higher Education Grants Index number for that year which is:
Wage Cost Index (Education) for the reference date x 0.6 + Consumer Price Index (Australia) for the September immediately preceding the reference date
Consumer Price Index (Australia) for the September immediately preceding the reference date

(3) The Minister in the Gazette will publish the index number at any time, including any time before the start of the year. The reference date is the September of the year immediately preceding the grant.

Question negatived.
cerned, setting up yet another committee to examine the prospect of changing the formula for indexation, with a result in 2007-08—maybe—is hardly adequate. This is no great prize.

There is no way, no matter how sanctimoniously it is put, that the vice-chancellors or the crossbenchers can persuade anybody that there has been any achievement here whatsoever. You are proposing that two elections away—some time after a second election—this government might contemplate changing the indexation formulas. Frankly, this is clearly a case of buying a pig in a poke. This is a very sorry day for education and it is the result of these somewhat tawdry arrangements. The Independents have chosen en bloc, en masse, to sign up sight unseen to the government’s package. It is equally shameful, as far as I am concerned, that a vice-chancellors committee has signed up when the University of Western Sydney, the VUT and the Victorian College of the Arts—and, up until this point, Batchelor College—have been hung out to dry.

Frankly, it is an appalling situation. Once again, it is another threshold question—one of these ‘no surrender’ clauses that we were told so much about—but when it comes down to this basic issue what has been proposed? ‘We are going to get the mirror out. We are going to get the committee onto it. We are going to have a look at it and we might come back with a solution—a proposal anyway—in the year 2007-08.’ What incredibly tough negotiators produced that outcome? What extraordinary, hard men and women produced that miserable, miserable arrangement? It is not often that I quote Paul Kelly, but last weekend in the Australian he wrote:

... the cabinet refuses to bite on the big issue—the failure to index grants according to wage costs ...

The truth is that the Howard cabinet refuses to accord universities the public funding they need, not because they do not have the money (it does in spades) but because it doesn’t have the commitment.

In that context you have to ask yourself why people are so gullible as to buy a proposition that says we will have another review into the issue of indexation, with a prospect of some change possibly in a couple of elections time. That is why I say it is a miserable and shameful effort. Frankly, people who regard themselves as being the wise men of higher education have been completely conned and will not win any credit within the sector for such a miserable effort.

We all understand the pressures on universities. We all understand the impact of not providing adequate indexation. We all understand that, primarily, the impact is on quality. That is why the university system is in crisis. It will only be a matter of time, no matter what baubles are offered in this package, before the same problems arise again. That is why Professor Brown, from the University of Sydney, pointed out to the Senate committee that this package is unsustainable. You are signing this country up to a proposition that is unsustainable. Do not come in here trying to maintain some great sanctity about being the saviour of the nation because of these compromises. They do not deal with this fundamental question. We are being asked to endorse a package which, in the long term, is unsustainable, which shifts the costs onto students and their families and which effectively lifts the burden away from public responsibility—in particular the Commonwealth government’s responsibility—onto individuals in a manner that will increase the levels of inequality and will leave universities like the University of Western Sydney and the Victorian University of Technology isolated and in a position where they are not
able to call upon this parliament for protection.

The opposition amendments seek to establish a sound system of indexation for university grants that is affordable and able to quite clearly identify the actual cost to the budget. A system would be established that is not able to be misused by a government in the future if these amendments are incorporated into legislation. Of course, we understand the history of this. In the past much has been made of decisions taken in 1995. I reiterate that the decision taken in 1995 by the then Labor government, one year before the election, was a stopgap, a short-term measure, to provide a safety net adjustment, a minimum wage indexation. Everyone understood at the time that it was a temporary measure to provide an opportunity for the Australian Bureau of Statistics to develop a proper wage-cost index.

That index was completed in 1997, a year after the election. The responsibility for the crisis in higher education arises directly from the failure of the government to index the cost of running universities and can be tied directly to this government. The government has refused to adjust the indexation factor. So we now have a situation within the education system where schools are indexed at 5.6 per cent per annum, universities at 2.2 per cent per annum and the TAFE system at 1.8 per cent. We now have a situation where, in this coming year, the government will be spending more money on private schools than on the university system. But what is the answer to this problem? The answer from the Vice-Chancellors Committee, which they have signed off on, is to have another good look at it. Let it drift for another two elections. And you expect applause! Well, you won’t get it here.

We understand the consequences of the government’s decision in 1997 to have been at least $500 million to the system. The Labor Party’s amendments would restore the funding arrangements and would restore the quality arrangements to ensure that there are proper educational experiences available for students and staff. We suggest that the measures taken in this bill to find the funding to alleviate the starvation diet of encouraging individuals to pay more would not be necessary. We say that we do not have to see the dwindling in library stocks, the lack of adequate maintenance of buildings and equipment and the fact that so many of our universities now have to operate on increasingly shabby campuses. We would be able to provide a much higher level of quality education for both students and staff.

We have constructed an index that is based on a wage-cost index. We seek to provide an index that is weighted at 60 per cent for salary costs and 40 per cent for non-wage costs, which is in line with the actual operating costs of universities. This would replace the current index, based on the inadequate safety net adjustments, and would allow a shift in the balance from a 75 per cent-25 per cent cocktail to the more adequate and more accurate measure of a 60-40 mix. That remains Labor’s policy. That will be the position we will be arguing for in the run-up to the next election.

We have indicated to students that we will not support increases in student fees. Irrespective of whatever arrangements have been made, the Labor Party will go to the next election not supporting the deregulation of student fees. If people think this argument is just going to go away, they are in for a hell of a shock. We will campaign throughout the length and breadth of this country on the total inadequacy of this package. We will expose those who have made these arrangements, and they will have to take responsibility. I say that those who have taken responsibility for leaving out the University of West-
ern Sydney, the Victoria University of Technology and the other institutions I have named here tonight ought to be ashamed of themselves, and those who have sought to do so by cloaking themselves in some measure of respectability by citing the vice-chancellors equally ought to be ashamed of themselves.

There is no other provision here; we will wait and see what happens. But I would expect the same pattern to emerge. The deal has been done, the checklist is in order and you will vote for the government, irrespective of the merits of any alternative policies or alternative amendments that have been proposed. You will vote against all other amendments. We all know what the game is, and we will explain that to the Australian people.

Senator HARRIS (Queensland) (9.27 p.m.)—If anybody is going to be ashamed of themselves, and if that is going to be used as a tag in the chamber, let that rebound on the Labor Party. Who privatised the Commonwealth Bank? Who designed Australia—

Senator Carr—What division of the bill covers the Commonwealth Bank?

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order! Senator Carr, you were heard in silence.

Senator HARRIS—Who negotiated Australia’s deal with the WTO on the General Agreement on Trade in Services? The Labor Party did, and if anything is going to destroy workers rights in this country it will be that treaty.

Senator NETTLE (New South Wales) (9.28 p.m.)—The Australian Greens will support the opposition’s amendments that deal with indexation. The model proposed by the opposition for indexation is not the Australian Greens preferred model, but we will support it. The position of the Australian Greens is to have a model for the indexing of universities that is the same as the model we have for the indexation of schools. To highlight that issue, I quote the Vice-Chancellor of the University of Technology, Sydney, Professor Ross Milbourne, who said to the Senate committee inquiry into this bill:

I cannot for the life of me understand why we cannot have the same indexation as schools because, over time, the government investment in higher education as a percentage of GDP will dwindle dramatically if that does not happen.

This is the sort of model and approach the Australian Greens support. Just as we have the AGSRC for schools, a similar indexation model for universities is about providing the actual cost of running a university, as Senator Carr was articulating before. It is based on a realistic understanding of the costs that universities incur. That is an appropriate model through which we should index government funding of higher education institutes. That is the sort of model the Australian Greens support. We do not have an amendment to introduce that model into this piece of legislation, so we will be supporting these Labor amendments on indexation.

I want to make another comment on the issue of indexation. At the time of the Senate inquiry, the number one demand of all of the vice-chancellors who came before the inquiry was the issue of indexation. Pleas were put to the Senate committee saying, ‘We wouldn’t have to be charging students these increases in fees—these 30 per cent in-
creases in HECS charges—if we had a real model for the indexation of funding from the Commonwealth to public universities.’ It was the number one demand of the Australian vice-chancellors.

We are now here in the Senate debating the issue of indexation, having recognised that the Independent senators have reached an agreement with the government to review indexation in a couple of years. This was the number one demand of the vice-chancellors, but in the last couple of weeks we have not heard very much at all about indexation coming from them. Now, if this was their key, number one demand and they perceived the four Independent senators as being the way in which they could get the things that they wanted changed in this package, why on earth did the vice-chancellors drop the issue of indexation? Why did they take away the negotiating power for the Independent senators to get an indexation model put into this bill? Why are we now in a situation where the only way to deal with indexation is for the government to say to the Independent senators, ‘We’ll give you a review in a couple of years time’?

It is a great shame that the vice-chancellors, whose number one demand was indexation, are now in a position where they are supporting a deal which does not have indexation in it. All it has is a review in a couple of years time. It is a failure of the vice-chancellors, the issue has been dropped and now we have a review—that is all—for the number one demand of the vice-chancellors throughout the Senate inquiry. It is not good enough.

Senator CHERRY (Queensland) (9.33 p.m.)—Mr Temporary Chairman, I want to deal with some of the individual effects, because I think that some in the Senate are almost starry-eyed with the size of this package—the $1.5 billion or $1.7 billion that it is now up to—and keep forgetting that this obviously has impacts which filter through in different ways.

I think Senator Carr has made this point, and it is worth pointing out again that in 2005, post the most recent Tasmanian side deal, seven of the 39 public universities in Australia will be worse off under this package, and another three will be technically worse off against the indexation formula. They are, of course, UNSW, the University of Western Sydney, the Swinburne University of Technology, the Victoria University of Technology, Murdoch University, the Batchelor Institute of Indigenous Tertiary Education, the Northern Territory University, the University of New England, the Australian Catholic University and the Australian National University. I think these come out of the government’s direct figures. So we are looking at 10 out of 39 which will actually be worse off in the first year. And, by the third year, those universities will still be well below the average. Four of them will still be on transitional funding, frozen, to get the same dollar amount they got before this package started, and the rest will be getting increases of less than a third of the average increase for universities. So we are talking
about a package that leaves a quarter of Australia’s universities behind in the starting blocks and only benefits three-quarters of universities. That really worries me. It makes me quite sad, because the package has not been fixed—there are still problems with it—and yet we are passing it off. We will hear a headline tomorrow, I suppose, about the $1.7 billion, but a quarter of our universities are not going to get it because of the change in the funding formula.

In addition to that, the indexation will deliver, in 2007, $207 million extra indexation on operating grants. According to the current Phillips report, in that year university students will be paying an extra $290 million in HECS as a result of the increases in this package. That, I think, is very unfortunate as well. We already have, as has been pointed out many times in this debate, the fourth highest rate of student contribution of any country in the OECD. Under this package and these changes which have been agreed tonight we will surpass at least one or two of those countries in the next five years. That really saddens me, because again we are asking the universities to do what we were asking them to do in 1997, which was to substitute indexation and public funding for student contributions. I think that is unfair.

This is an unfair package. I really believe it would be better to let universities mull through the next year and make this package an election issue, rather than to put these things in the law where they will stay. Senator Carr has said that the ALP will campaign on these issues, but in earlier debates I have heard him say that a Labor government would not be unwinding many of these reforms. From that point of view, what we are doing today may actually form the basis for future funding and future debates about student contributions. It is very hard to undo these things when they have been put into law.

I know it is very late, but I would ask the Independents, yet again, to look at the numbers in this package. I am a numbers man: I always look at numbers to try to work out what the benefits will be. To me, the fact that the 7½ per cent gives $207 million in extra funding in 2007 and the 25 per cent HECS increase will, on the most logical projections for that year, make students pay an extra $290 million is not fair and does not add up.

Senator STOTT DESPOJA (South Australia) (9.37 p.m.)—I have previously put on record my views about indexation. My colleague Senator Cherry has described this as sad and unfair. I would probably add to that list ‘somewhat naïve’. The year 2008, which is what we would be looking at before any other indexation measures are countenanced let alone implemented, is too far away. It is too long a time period. The universities know that. I know that the vice-chancellors know that. I want to put on record a comment made by Professor Gavin Brown, the Vice-Chancellor of the University of Sydney. He said:

... the most significant defect—in the reform package—is the lack of an effective mechanism for indexation of the government contribution.

Senator Nettle made it very clear in her contribution that the vice-chancellors nominated this as the pivotal issue. It has been a pivotal issue for many years. Earlier this evening I put on record that the deficiency in funding is a consequence of a lack of meaningful indexation. Senator Nettle has referred to her amendment. I have a similar amendment that relates to university grants being indexed in the same way that schools are to make up the shortfall of around three per cent that currently exists because of the different indexa-
tion arrangements. I indicate now that I will not speak to amendments (109) and (110), which are the two Democrat amendments that relate to indexation, but we will be supporting the amendments before us now.

Question put:

That the amendments (Senator Carr’s) be agreed to.

The committee divided. [9.43 p.m.]

(The Temporary Chairman—Senator H.G.P. Chapman)

Ayes…………… 31
Noes…………… 33
Majority……… 2

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G.
Campbell, G. Carr, K.J.
Cherry, J.C. Collins, J.M.A.
Conroy, S.M. Crossin, P.M. *
Evans, C.V. Forshaw, M.G.
Grog. B. Hogg, J.J.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. Marshall, G.
McLucas, J.E. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Ray, R.F. Ridgeway, A.D.
Stott Despoja, N. Webber, R.
Wong, P.

NOES

Abetz, E. Barnett, G.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Harradine, B. Harris, L.
Heffernan, W. Hill, R.M.
Humphries, G. Johnston, D.
Lees, M.H. Lightfoot, P.R.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. * Minchin, N.H.
Murphy, S.M. Patterson, K.C.
Payne, M.A. Santoro, S.

Scullion, N.G. Tierney, J.W.
Troeth, J.M. Vanstone, A.E.
Watson, J.O.W.

PAIRS

Cook, P.F.S. Boswell, R.L.D.
Denman, K.J. Tchen, T.
Faulkner, J.P. Alston, R.K.R.
Moore, C. Knowles, S.C.
Sherry, N.J. Macdonald, I.
Stephens, U. Kemp, C.R.

* denotes teller

Question negatived.

Senator STOTT DESPOJA (South Australia) (9.46 p.m.)—by leave—I move Democrat amendments (109) and (110) on sheet 3189:

(109) Clause 198-5, page 175 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Item</th>
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<th>See:</th>
<th>First year of indexation</th>
</tr>
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<tr>
<td>1</td>
<td>*Commonwealth contribution amounts</td>
<td>section 3</td>
<td>2005</td>
</tr>
<tr>
<td>2</td>
<td>*Maximum student contribution amounts per place Section 9</td>
<td>3-10</td>
<td>2005</td>
</tr>
<tr>
<td>3</td>
<td>The *maximum OS-HELP amount</td>
<td>section 1</td>
<td>2006</td>
</tr>
<tr>
<td>4</td>
<td>Other Grants maximum grants</td>
<td>Section</td>
<td>21-5</td>
</tr>
<tr>
<td>5</td>
<td>Grants for Commonwealth Scholarships</td>
<td>Section</td>
<td>2005</td>
</tr>
</tbody>
</table>

(110) Clause 198-20, page 176 (lines 11 to 15), omit the clause, substitute:

198-20 Meaning of indexation factor

The indexation factor is calculated using the same method described in section 154-25.

I commend the amendments to the chamber. They take into account my previous comments in relation to a new indexation provision. I wrongly suggested that Senator Nettle had the same amendment; I am sure she has one that is virtually the same and will be supporting this amendment. The Democrat amendment seeks to get an indexation provi-
sion for universities that is the same as that which our schools have.

Question negatived.

Senator CROSSIN (Northern Territory)
(9.47 p.m.)—I move opposition amendment (50) on sheet 3209:

(50) Clause 41-10, page 57 (after line 8), at the end of the clause, add:

(3) The Other Grants Guidelines must specify that the Batchelor Institute of Indigenous Tertiary Education is eligible for grants in accordance with item 4 of the table in this section.

I wish to place very clearly on the record the situation as it is now for Batchelor Institute of Indigenous Tertiary Education. I say this in the amorphous context of practical reconciliation and in the context of four Independent senators having negotiated this deal with the government. I would have thought that at the end of the day you would at least have struck a better deal than this for the one and only higher education institution in this country that has only Indigenous students.

Let me place on the record what has, for me, become evident in the funding arrangements for Batchelor Institute of Indigenous Tertiary Education under this package and the misconception that this government has conned you into believing that Batchelor is going to be better off under this package. Clearly, it is not. Let us set aside the enabling funding for a moment; let us just look at this package and its new mix. In 2005 Batchelor Institute of Indigenous Tertiary Education will be worse off by $1.631 million. In 2006 it will be worse off by $1.50 million, and in 2007 it will be worse off by $1.451 million under this package. If they were to get transitional funding, that is the amount each year they would be entitled to have, but Batchelor is not going to get transitional funding. As a result of us having raised the issue in estimates, it will now be getting the enabling funding—in other words the anomalous funding. As Senator Vanstone said today, that will be $2.038 million in 2005, $2.079 million in 2006 and $2.120 million in 2007.

This government would have us believe that even though Batchelor Institute will not be eligible for transitional funding, they would be getting anomalous funding and so will be no worse off. In fact, if you take one lot of figures away from the other, they will be better off by only $407,000 in 2005. In 2006 that figure will be $559,000 and in 2007 it will be $669,000. It is a real pity that Batchelor can only look forward to additional funding of between $407,000 and $669,000. If they were to receive the transitional funding as well as the anomalous funding, then they would be much better off under this package. It is a real shame that, in negotiating this funding package, four Independent senators have not been able to secure the transitional funding, the anomalous funding and the enabling funding for Batchelor Institute of Indigenous Tertiary Education.

This government would lead us to believe that with the anomalous funding Batchelor will be no worse off. It will not be, but it is only going to be marginally better off. In fact, the paper that was tabled today says this:

Batchelor College will not require any transitional funding because this funding—that is, the anomalous funding—will put it in a better financial situation.

But, as I said, it will only be marginally—much less than a million dollars by 2007. But we are talking about the only institution in this country that caters for Indigenous students. We are talking about an institution that is located 120 kilometres south of Darwin, that has Indigenous students from remote
communities scattered throughout the Territory and across the top end of this country, as well as a number of students in the southern states. This is an institution that has to cover the length and breadth, predominantly, of the Territory—1.2 million square kilometres. This is an institution that is trying to encourage traditional Indigenous people to take up higher education in a whole range of areas—teaching, nursing, communications, health studies—and it cannot do that on a shoestring. If you were going to negotiate any sort of package under this bill, I would have thought you might have got the best deal you possibly could for Indigenous people in this country. We moved motions with the Greens and Democrats to ensure that the transitional funding would be there. According to Minister Nelson’s words, no institution would be worse off. But the amendment did not get up. Senator Stott Despoja talked about the impact of that amendment on the University of New South Wales and the Victoria University of Technology. Since that time, I have had a really close look at the new table and the figures and that also included Batchelor College. So when you did not support our amendment for transitional funding, you kissed goodbye to $1.6 million for Batchelor College in 2005, $1.5 million in 2006 and $1.4 million in 2007. Do not tell me that is practical reconciliation. Do not tell me that is doing all you possibly can and putting in 100 per cent effort to get more Indigenous people back into higher education, because it simply is not. This negotiated package has been a failure and a farce.

Turning to the amendment that I am proposing, it became apparent during the estimates process, quite by accident—and thanks to Veronica Arbon, the director of Batchelor Institute, for highlighting it to me—that through some limited discussions they had with DEST they would be taken off the list of anomalous funding. Clause 41-10 of the bill—and you have to hunt for this I have to say—says something like this:

Grants to support national institutes specified in the Other Grants Guidelines for the purposes of this item.

For ever and a day, those national institutes that have been specified in the other grants guidelines have been the AIS at ANU, the Australian Maritime College and Batchelor College. I found out in the estimates, quite
by accident, that Batchelor College is going to be dropped off the list—it will not even be there. The excuse I got was that because of the new arrangements with the Indigenous support funding and the new enabling funding it would be okay for them. I found out tonight that it is not okay for them. My amendment seeks to put the Batchelor institute back on the list of the other grants guidelines so that it becomes the third institute of national institutes that are specified in the other grants guidelines.

Some would say: ‘Batchelor College are going to get this anomalous funding until 2007. Don’t worry about your amendment, Senator Crossin, because they are going to be looked after for the next three or four years.’ I want to make sure that they get this funding forever—that as long as the funding is available, they will get it. At least that will fix up one part of the funding for Batchelor institute. I understand we are trying to get this government to realise that they need to reinstate the transitional funding again. You cannot be serious about getting more Indigenous people into higher education, you cannot be serious about getting more Indigenous staff employed in higher education institutions. You cannot be serious about fixing up the dismal health and education problems we have in remote communities if there are not Indigenous people in those communities who are trained teachers, trained health workers and trained community liaison officers who can actually rectify the abysmal state that Indigenous Australians find themselves in in 2003. You have to encourage them to take up higher education and there has to be adequate funding.

If we are going to have a deal done tonight before us at one minute to midnight, I implore the four Independent senators to listen to what I am saying. Batchelor College needs to have the transitional funding reinstated to it. It needs to be on this list as one of the three institutions that will get anomalous funding forever, or whilerever that funding exists. Then at the end of the day when this bill gets up, as it will, not because of anything we are trying to do to ensure there is equity and fairness in the bill but thanks to the four Independent senators, at least they will be able to say, ‘We did the best we could for Indigenous Australians out of this deal we have negotiated with the government.’

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation)(10.00 p.m.)—I did indicate to Senator Murphy earlier in the debate that I would get something in writing in relation to the amounts of funding for Batchelor and the Australian Maritime College, though I have answered Senator Crossin and indicated that it would be ongoing. I have got that information in a reply from the minister’s office and I am happy to incorporate or table it. I think he wanted it incorporated, but if someone would prefer it tabled I do not mind.

Senator Crossin—Read it.

Senator VANSTONE—I will not read out the table because it is the same table you were given before. I will read out the portion that relates to this. It says:

The above table presents the budgetary impact over the next four years, however, the funding will be ongoing for both institutions. I will do whatever senators decide—

The TEMPORARY CHAIRMAN (Senator Chapman)—Minister, I suggest that incorporation would be the most appropriate course.

Senator VANSTONE—I seek leave to incorporate the document.
Leave granted.

The document read as follows—

In response to a request from Senators during the debate of the Higher Education Support Bill 2003, the Minister for Education, Science and Training has provided the following information to the Senate:

**Funding for Batchelor Institute of Tertiary Indigenous Education**

The announced allocation for National Institutes of $23 million over four years provides funding to both Batchelor Institute and the Australian Maritime College.

The funding over the next four years is apportioned between the institutions as follows:

<table>
<thead>
<tr>
<th></th>
<th>2005 $m</th>
<th>2006 $m</th>
<th>2007 $m</th>
<th>2008 $m</th>
<th>Total $m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Batchelor</td>
<td>2.038</td>
<td>2.079</td>
<td>2.120</td>
<td>2.162</td>
<td>8.399</td>
</tr>
<tr>
<td>AMC</td>
<td>3.567</td>
<td>3.638</td>
<td>3.710</td>
<td>3.784</td>
<td>14.698</td>
</tr>
</tbody>
</table>

*sums may not be exact due to rounding

The above table presents the budgetary impact over the next four years, however, the funding will be ongoing for both institutions.

The AMC will require transitional funding in 2005 but from 2006 will be receiving more money than it currently is. Batchelor will not require any transitional funding because this funding (together with funding from the announced loading for enabling courses) will put it in a better financial situation in 2005 than it is at present.

**Senator Crossin**—Read the part where it says that Batchelor will not get transitional funding.

**Senator VANSTONE**—I might mention, Mr Temporary Chairman, that I must have about me that look that deaf people sometimes have, because I find that people in the chamber are yelling. I want to advise everybody that my hearing is quite good. I think the microphones are working quite well and there is no need to raise our voices at each other—without referring to anybody in particular.

**Senator Stott Despoja**—Have a go at us, but don’t insult deaf people.

**Senator Crossin**—I don’t tell you how to deliver your speeches. Don’t tell us how to deliver ours.

**Senator VANSTONE**—Dear, dear. Tempers are getting short. In response to Senator Stott Despoja, I might say I am not insulting deaf people. I worked for the last couple of years in the portfolio that deals with disability, and it is true with some people who are deaf that you can look at someone’s face and realise that they might be lip-reading. It is a particular look. If you are sensitive to it, you will recognise it; if you are not, you won’t. I make it perfectly clear that those remarks, just in case someone should wish to take them out of context, are not in any way designed to be insulting. Just before I put some further remarks on record, I might point out that other people, even if they do raise their voice, are heard in silence, and it might help us all get through without getting scratchy if we can do each other the same service.

In relation to Batchelor, I want to make it clear that the government will be making Batchelor Institute of Indigenous Tertiary Education a national institute under the other grants guidelines and the additional funding will be paid out through item 4 of the table in section 41-10 of the bill. The guidelines will specify the amount of funding that will reflect the document. The institute will also get a further $673,000 over 2005-07 in the new enabling course loading. This funding will all be ongoing. This additional funding will bring Batchelor into a better financial position in 2005 and beyond than it is at the present. Transitional funding is only needed by institutes that do not end up in a better position. All the ALP amendment (34) would do is to keep Batchelor’s funding at the same level as it currently stands; it does not increase it in any way. The additional funding
provided by the government of approximately $600,000 per year ongoing is on top of what it currently gets. This represents approximately a seven per cent increase to the current operating grant funding and, quite specifically to you, Senator Crossin, that is a function of negotiations we have had with the Independents, which I think have been quite successful.

Senator CROSSIN (Northern Territory) (10.05 p.m.)—Senator Vanstone, I have before me a table headed ‘The impact of the enabling loading’ and I would like you to confirm for me on the record whether or not in fact this table shows that in 2005 Batchelor College will be worse off by $1.6 million, in 2006 by $1.5 million and in 2007 by $1.4 million. Is it not the case that that is transitional funding that this college will not be entitled to have and which, even if it was entitled to have it, would end in 2007? The paragraph you chose not to read out from the document you have incorporated tonight says this:

Batchelor will not require any transitional funding because this funding ... will put it in a better financial situation in 2005 than it is at present.

Of course, if it had the transitional funding then in fact in 2005 it would be $1.6 million better off, rather than worse off, and so on across the table. You are not providing it with transitional funding, you are replacing the transitional funding with the anomalous funding, and therefore that only makes Batchelor College better off in 2005 by $407,000, in 2006 by $559,000 and in 2007 by $769,000. Is that not the case, that the anomalous funding replaces the transitional funding? Minister, if your government is committed to Indigenous higher education, why is it that Batchelor College cannot get both sets of funding?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (10.07 p.m.)—I understand the table to which you are referring, Senator Crossin, and it does show a decrease in those years, but combined with the table that has been tabled you still end up with a net increase. I have not checked it exactly, but I am informed by my advisers that you are probably near the mark. And what you are confirming, in fact, is that Batchelor College is better off.

Senator Crossin—I’m asking you why it can’t be better off.

Senator VANSTONE—All you are asking is why can’t it be better than better off and the answer is that we have provided not only a system where it is no worse off but a system where Batchelor College is in fact better off.

Senator Crossin interjecting—

Senator VANSTONE—I understand that you are registering your displeasure with that.

Question negatived.

Senator NETTLE (New South Wales) (10.08 p.m.)—by leave—I move Australian Greens amendments (18) to (23).

(18) Clause 154-10, page 140 (lines 19 to 23), omit the clause, substitute:

154-10 Minimum repayment income

The minimum repayment income for an income year is the amount as indexed under section 154-25.

(19) Clause 154-10, page 140 (line 21), omit “$30,000”, substitute “average male weekly earnings as defined in section 154-25”.

(20) Clause 154-20, pages 141 and 142 (table), omit the table, substitute:
Applicable percentages

<table>
<thead>
<tr>
<th>Item</th>
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<th>Percentage rate to be applied to HECS repayment income:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Below $45,880</td>
<td>0.0%</td>
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<tr>
<td>2</td>
<td>$45,881 - $48,622</td>
<td>3.0%</td>
</tr>
<tr>
<td>3</td>
<td>$48,623 - $52,658</td>
<td>4.0%</td>
</tr>
<tr>
<td>4</td>
<td>$52,659 - $55,430</td>
<td>5.0%</td>
</tr>
<tr>
<td>5</td>
<td>$55,431 - $60,972</td>
<td>5.5%</td>
</tr>
<tr>
<td>6</td>
<td>$60,973 - $65,000</td>
<td>6.0%</td>
</tr>
<tr>
<td>7</td>
<td>$65,001 and above</td>
<td>6.5%</td>
</tr>
</tbody>
</table>

(21) Clause 154-25, page 143 (line 11), omit “all”, substitute “male”.

(22) Clause 154-25, page 143 (line 15), omit “all”, substitute “male”.

(23) Clause 154-25, page 143 (lines 1 to 23), omit “AWE” (wherever occurring), substitute “Average male weekly earnings”.

In speaking to these amendments about the HECS repayment threshold, I need to state again for the record that the Australian Greens do not support the current system of HECS. We do support a fee free access to tertiary education, where people pay through a progressive taxation scheme for the services that they get at university rather than having financial barriers placed in front of them in order to access higher education.

So in the context of not supporting HECS, I wanted to go back to when HECS was first introduced in 1989. The idea then was clearly to use student funds to finance an expansion of the sector but, in doing so, only require those funds to be paid back once the student was earning at least average weekly earnings. This fits to an extent with the rhetoric of the current minister, who has told us that it is fair that those who obtain a personal financial benefit should make a contribution in return. This is logic that the Australian Greens reject, noting that people make their contribution to public education through a progressive taxation system. We also point to the sacrifice of earnings that many students make by choosing to spend three, five, seven or more years out of the full-time work force so that they can engage in their studies. And in some cases, this represents a very significant sacrifice, far outweighing the cost of their course.

Notwithstanding these objections, if we follow the minister’s logic then the setting of the repayment threshold at average weekly earnings seems to make sense. Only when people are earning more than the average can they be said to be obtaining a private benefit in comparison to the rest of us. This is not what this government has done with HECS. Confirming the fears of those who oppose the introduction of fees, this government—and to a certain extent the one before it—has, on the one hand, increased the levels of HECS loans whilst, on the other hand, decreased the threshold at which students must repay the loans. The level of repayment threshold in the bill is well below average male weekly earnings, which are running at $928 per week or about $48,000 per annum.

If the minister is fair dinkum about his theory of ‘user pays only when they benefit’, then we should be having a HECS repayment threshold at average male earnings of $48,000 per annum, not the amounts that have been suggested by the government in this legislation. The government should be putting their money where the minister’s mouth is and lifting the threshold to average male weekly earnings, as the Greens are proposing in this amendment. I commend the amendments to the chamber.

Senator STOTT DESPOJA (South Australia) (10.12 p.m.)—The Australian Democrats have a similar amendment. We seek to do the same, which is to increase the threshold at which graduates begin to repay their HECS debts. I have put on record not only the Australian Democrats view of HECS and what we consider are inappropriate repayment arrangements but also the fact that the threshold should be much higher. I commend
the amendments to the chamber. We will be supporting Senator Nettle’s amendments.

Senator HARRADINE (Tasmania) (10.13 p.m.)—If only the background and the difficulty of negotiating this matter were known. We have now gone from $24,000 to $33,000—with the AVCs—and now to $35,000 which, of course, will be indexed. I think students will strongly welcome this move, particularly the poorer students. In all this discussion, I have not heard a whisper about the increase in fees which various state governments have imposed on TAFE students—not a whisper, yet they are the workers—

Senator Murphy—310, you said.

Senator HARRADINE—I was going to say to Senator Nettle and Senator Carr, ‘What about the TAFE people?’ Not a whisper. These are the workers’ kids.

Senator Nettle—We have talked about it in this place.

Senator HARRADINE—Well, let’s hear about it. It makes me sick. The Carr government has imposed fee increases of 300 per cent on TAFE students. There is no option to defer the fees—they have to be paid upfront, in cash and there is no interest free loan scheme. TAFE students do not all get the same financial benefits of those lucky enough to attend university. The current threshold of $24,000 or thereabouts is now up to $35,000. I thought we may have got some thanks for that sort of thing. I hope and expect that students will be quite pleased with the increase in the threshold. There are a whole lot of figures that show how this will be better, but I am not going to delay the chamber tonight. I just thought it most important to at least talk about the TAFE students. Something really has to be done with that. The Bracks government in Victoria has increased fees by 25 per cent—there is no talk about that. In South Australia the TAFE fees have been increased by 50 per cent. That is a disgraceful situation and it is time the state governments looked after their TAFE students.

Senator HARRIS (Queensland) (10.17 p.m.)—I would like to add briefly to what Senator Harradine has said, and reiterate what I said earlier this evening when speaking about HECS. The other substantial benefit that we have negotiated for the students is that the $35,000 cut-in for HECS is effective in the 2004 year, so it has brought that higher ceiling back a full calendar year on what was originally proposed. So not only do we have the ceiling lifted from $24,000 to $35,000 but it is effective next year. That is another reason why it is important for this legislation to be in place for next year.

Senator CARR (Victoria) (10.18 p.m.)—Senator Harradine has asked us to comment on TAFE. This is not a TAFE bill that we are discussing; this is a higher education bill! But I am always happy to talk about TAFE—always happy. I will make a couple of points to Senator Harradine. There are about 1.8 million TAFE students in this country. They get half the unit costs from this government that higher education students get—half! They have an indexation rate of 1.8 per cent and the rate for higher education is 2.2 per cent—nothing like the private school rate of 5.6 per cent. If you want to talk about TAFE funding, let’s talk about TAFE funding. Let’s talk about the hundreds of millions of dollars this government has ripped out of the TAFE system and the 1.8 million Australians who have been disadvantaged by those decisions. We have not heard a word from you, Senator Harradine, in defence of those 1.8 million Australians or about this government’s actions.
You want to talk about policy in regard to fees in TAFE. Well may the states be criticised for their actions. I am not particularly fussed if people want to criticise state governments for their policies on fees, but the issue should be clear. What is the average price of a fee in a TAFE college? There are very few fees of more than $100 or so for those 1.8 million Australians. Most of the fees are very modest and there is an extraordinary range of exemptions—health care card holders, people on benefits; there are a whole range of measures for them. If you look at the number of working-class people in TAFE, the figures completely dwarf any concept of the number of working-class people in higher education institutions. But leave that aside, Senator Harradine; you are recommending to this parliament that we accept fee increases of 25 per cent. Your big achievement is to reduce the fee increases from 30 per cent to 25 per cent—not on fees of a couple of hundred dollars but on courses that cost thousands and thousands of dollars. There will be crippling debts imposed upon many families in this country.

Senator Harradine, you are very experienced in this place—you know full well what is a good deal and what is not. This is not a good deal. I am afraid you have sold the system short. There is so much more that could be done. You have accepted the advice of some vice-chancellors, which is a disappointment to me. There are fundamental changes being imposed to the higher education system that are much, much worse than those you accepted in 1996, which fundamentally distorted the equity arrangements in the system at that time. This will extend those inequalities. It will see enormous benefits go to the rich and powerful and those institutions that currently secure over 60 per cent of the operating surplus for the entire system—the big four. It will see the University of Tasmania seriously disadvantaged in the long term, because all these deals that are being done are essentially temporary.

I come back to the point: we are talking about transitional funding, private arrangements on a temporary basis. The changes that this government intends will be permanent. And when you are well and truly gone from here, Senator Harradine, as I will be, many of those changes may well be still in existence, and the University of Tasmania may well be seriously disadvantaged as a consequence. You may well have secured a few extra places for Tasmania in the short term and you may well be able to halt the demographic decline in terms of the arrangements currently underway; however, I doubt it, because they will only live as long as this government lives and as long as this minister is here. No minister stays in office forever; no government stays in office forever. These arrangements, however, will remain permanent in regard to the discretion that a minister has to chop and change and to intervene in the day-to-day running of a university. When it comes to the research funding, we will wait and see what the consequences of that are.

Senator Harradine, I know your keen interest in these matters. You may not be happy with the consequences or the long term. Senator Harradine, if you want to compare the performance of this government with regard to TAFE, I am happy to discuss that. If you want to compare the performance of the state governments on TAFE, I am more than happy to discuss that. But when the ANTA bill comes in here, what is the bet you will back that? Because essentially what we are looking at here is an arrangement entered into in private, the detail of which has yet to be revealed, the consequences of which are as yet unknown and which essentially seeks to legitimise the fundamental inequalities of these arrangements. So I say to you, Senator Harradine, you will get no applause here.
You will get no endorsement for what you have done, nor will the Vice-Chancellors Committee, which has left many of the weaker universities hanging out to dry—the consequences of which will be permanent and will weaken those institutions.

I know, Senator Harradine, you have a deep concern for Tasmania, but Tasmania needs a great deal more assistance than you have been able to provide. The problems in Tasmania will not be fixed by this temporary arrangement that you have entered into. While we will not be necessarily supporting the amendments of the Greens on this—they go beyond our position in terms of the HECS threshold—I welcome the fact that the government has now adopted the Labor Party policy on the HECS threshold of $35,000. That is the Labor Party policy, and that is the position I support; I do not support the proposition that the Greens have put on this particular matter. They take it beyond the $35,000. But what I will not ever support are the sorts of arrangements that have been entered into here tonight and rammed through this parliament without proper consideration. We have moved 90 amendments tonight. I say to you that not one of those has been given consideration—not one of them—because the deal was straightforward: you support the government and you reject the opposition, irrespective of the merits of the argument.

I see in the gallery that the former President of the Vice-Chancellors Committee is with us tonight—a very fine man. What he said to me was this: we will try to negotiate arrangements, but we expect you to stand firm to fix up the problems—indexation and a whole series of other measures. And what has happened? The deal has excluded those problems from being fixed—and that is what you have signed up to, sight unseen. Frankly, that is why I say you should be ashamed of yourself.

Senator STOTT DESPOJA (South Australia) (10.26 p.m.)—I do not want to prolong this debate, but Senator Harradine asked about ANTA or the vocational education and training sector. Apart from Senator Carr’s comments, which I think covered the debate very well, I would also indicate that this is not the ANTA legislation. The Democrats, like the Labor Party and others in this chamber, will be there when ANTA is up for debate. We were there when this government imposed the efficiency dividend. We were there when the government and state governments in particular talked about increasing fees, charges and, indeed, upfront fees. I say this because Senator Harradine was wondering what our views were on this issue: we have certainly put on record many times before that our fundamental view underpins our approach to this bill—that is, the Australian Democrats have a commitment to publicly funded and accessible education for all. That applies to the training sector as well, to vocational education and training; it applies to the higher education sector; and it applies to primary and secondary education as well. Our views are very clear on that issue and our record is very strong. The current work of Senator Lyn Allison on training matters is also well known.

For someone to stand up in this place to talk about wanting thanks for an amendment when we are reaching a threshold position that we would have reached if the changes had not gone through in 1996 with the support of the government and two Independent senators! One of those Independent senators, as Senator Harradine would acknowledge, was him. We are going back to a situation that should have occurred naturally. Those students who were affected by not only the
HECS payments but the distortion in the HECS system as a consequence of those changes in 1996 and of the threshold changes have been repaying their debts more quickly with higher percentage rates of repayment and, as a consequence—you have heard the research; we have put it on record before—there is an impact on not only their lives, their mortgage repayments and their access to home loans but even their fertility rates, as one piece of research has shown. That is why the Democrats have an amendment that seeks to increase the threshold to average male weekly earnings to make this a realistic threshold for students and indeed many families.

That covers us on the issue of training tonight, not that this is a bill that deals with training matters. I ask all senators not to get caught up in the wedge politics of training versus higher education that the government would have us caught up in. They are both important, integral sectors, and they should be funded accordingly. That is what we are trying to do with the higher education legislation before us tonight. We are quite happy to continue to pursue our efforts through the ANTA legislation, just as we will continue to do it through the states grants legislation when it comes to schools.

The change to the threshold is an improvement, but it is not good enough—and hence the amendments before us. Because I have pre-empted or spoken to the Democrat amendments, I will not proceed with amendments (85), (88) and (91) on this issue. I indicate to the government and other parties in this place that I will be moving en bloc the remaining Democrat amendments after this in relation to HECS. I will deal with them quickly and without division.

Senator MURPHY (Tasmania) (10.29 p.m.)—I am not going to ask for any thanks for anything. Senator Carr made a couple of comments that I think—and I do not want to misrepresent him—were to the effect that TAFE courses cost around $100. I think Senator Harradine’s point was that we did not hear Senator Carr screaming from the rooftops about very significant increases in TAFE fees. In New South Wales, the cost of certificate IV courses went from $260 to $750, graduate certificates went from $260 to $850 and graduate diplomas went from $710 to $1,650. Respectively, they represent a 188 per cent increase, a 227 per cent increase and a 132 per cent increase. I did not read any comments in the paper by Senator Carr about how outrageous that was. I say to Senator Carr: if you want to know how badly off the University of Tasmania is going to be, I suggest you have a word to the vice-chancellor and ascertain the facts. This is a democratic place, and Senator Carr is quite within his rights to accuse us or anyone else in respect of increases in fees. But the point is that you need to be a little bit consistent in respect of the TAFE fee increases, which were increased by a state Labor government—and very significantly increased.

Question put:

That the amendments (Senator Nettle’s) be agreed to.

The committee divided. [10.36 p.m.]

(The Temporary Chairman—Senator H.G.P. Chapman)

Ayes………… 9
Nees………… 30
Majority……... 21

AYES

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.
Senator STOTT DESPOJA (South Australia) (10:40 p.m.)—I am trying to devise a way to deal with my amendments. I know that there are some government and other amendments remaining, but I suggest, given that we have just dealt with the HECS thresholds, that I now seek leave to move Democrat amendments (85), (87), (88), (89) and (91). All of those amendments relate to repayment rates, amounts and thresholds.

Leave granted.

Senator STOTT DESPOJA—I move:

(85) Clause 154-10, page 140 (line 21), omit "$30,000", substitute "average male weekly earnings as defined in section 154-25".

(87) Clause 154-20, page 141 (line 20), at the end of the clause, add "These amounts are indexed in each year, after and including 2004-05.".

(88) Clause 154-20, page 141 and 142 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Item</th>
<th>For HECS repayment income in the range:</th>
<th>Percentage rate to be applied to HECS repayment income:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Below $45,880</td>
<td>0.0%</td>
</tr>
<tr>
<td>2</td>
<td>$45,881 - $48,622</td>
<td>3.0%</td>
</tr>
<tr>
<td>3</td>
<td>$48,623 - $52,658</td>
<td>4.0%</td>
</tr>
<tr>
<td>4</td>
<td>$52,659 - $55,430</td>
<td>5.0%</td>
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<tr>
<td>5</td>
<td>$55,431 - $60,972</td>
<td>5.5%</td>
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<tr>
<td>6</td>
<td>$60,973 - $65,000</td>
<td>6.0%</td>
</tr>
<tr>
<td>7</td>
<td>$65,001 and above</td>
<td>6.5%</td>
</tr>
</tbody>
</table>

(89) Clause 154-25, page 143 (line 11), omit "all", substitute "male".

(91) Clause 154-25, page 143 (lines 1 to 23), omit "AWE" (wherever occurring), substitute “Average male weekly earnings”.

I think most of the arguments have been put forward. I make special mention, however, of the issue of repayment rates. This is an attempt by the Australian Democrats to ease some of the repayment burden on Australian students. There are a number of consequential amendments among these that I will be moving. I have exempted amendment (92), which relates to the Higher Education Funding Council, from those amendments I have moved. These amendments deal with repayment rates and thresholds, the debate on which we have just had.

Question negatived.

Senator STOTT DESPOJA (South Australia) (10:42 p.m.)—I move Democrat amendment (20):

(90) Clause 154-25, page 143 (line 15), omit "all", substitute "male".

Question negatived.

Senator STOTT DESPOJA (South Australia) (10:42 p.m.)—I am not sure if the clerks are doing a tally. The Australian Democrat amendments on the running sheet that is not really a running sheet are grouped somewhat differently from the way that I have grouped them. So, as I am indicating...
what amendments I am moving and dealing with, there are still many left and at some point it would be good to get a tally.

The TEMPORARY CHAIRMAN (Senator Brandis)—You move them in the order that suits you.

Senator STOTT DESPOJA—I withdraw amendments (41), (42), (45), (62), (66), (70), (93), (111) and (119). I seek leave to move Democrat request (R72) and amendment (74) standing in my name. They were the same as the ALP amendments.

Leave granted.

Senator STOTT DESPOJA—I move Democrat request (R72) and amendment (74), relating to student contributions, namely HECS:

(R72) Clause 93-10, page 88 (line 1) to page 89 (before line 1), omit the clause, substitute:

93-10 Maximum student contribution amounts per place

The maximum student contribution amount per place for a unit of study is the amount specified in the table in relation to that funding cluster.

<table>
<thead>
<tr>
<th>Item</th>
<th>Funding clusters</th>
<th>Maximum student contribution amount per place</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Education</td>
<td>$2,898</td>
</tr>
<tr>
<td>12</td>
<td>Nursing</td>
<td>$2,898</td>
</tr>
</tbody>
</table>

(74) Clause 93-10, page 89 (lines 1 to 3), omit note 1.

Question negatived.

Senator STOTT DESPOJA (South Australia) (10.46 p.m.)—by leave—I move the administrative amendments standing in my name on the running sheet:

(94) Clause 169-10, page 154 (line 10), omit “as soon as practicable”, substitute “within 2 weeks”.

(98) Clause 169-20, page 155, (lines 15 to 23), omit subclause (1), substitute:

(1) 50 per cent of HECS-HELP exempt places will be allocated for equity groups and fields of study deemed to be areas of national priority, or areas where there is unmet demand for graduates. A student of such a kind is an exempt student for those units.

(113) Clause 206-5, page 180 (lines 5 and 6), omit all the words from and including “the decision maker” to and including “reject the application”, substitute “the decision maker must give notice of the decision to the applicant within three weeks of the receipt of the application for its review.”

(114) Clause 209-5, page 182 (line 13), omit “a reasonable period”, substitute “3 weeks”.

(115) Page 183 (after line 11), at the end of the Division 209, add:

| Maximum student contribution amounts per place |
|-----------------|---------------------------------------------|
| Item | Funding clusters | Maximum student contribution amount per place |
| 11   | Education       | $2,898                                      |
| 12   | Nursing         | $2,898                                      |

209-15 Reporting on reviewable decisions

Decisions reviewed in section 209-10 by the Minister or the Secretary must be reported to the Parliament as soon as practicable.

(116) Clause 212-1, page 184 (line 6), at the end of the clause, add: “Where the Administrative Appeals Tribunal is
considering a matter in accordance with this Division, the Administrative Appeals Tribunal must give written notice of a reviewed decision within 4 weeks of the application for the review, for the purposes of this Division.

(117) Clause 225-15, page 188 (line 10), omit “the period that the Minister determines,” substitute “a maximum of 2 years”.

I commend these amendments to the chamber. Amendment (113) requires the decision maker to provide a response to an applicant in respect of reviewing a decision, and the response of that decision must be made within three weeks. Amendment (114) specifies a time frame in which review decisions must be made—again, three weeks. The Democrats believe that one of the problems with the legislation is the lack of a tight time frame within which people must report, so again we have put that three-week time period in legislation. Amendment (115) actually inserts a new section that requires the minister to report to parliament on decisions that the minister or the secretary has reviewed. This, again, is one of the accountability provisions that the Democrats are putting forward. Amendment (116) specifies a time limit for the AAT to make review of a decision. Amendment (117) limits to two years the period of a minister’s approval of a self-accrediting entity. This avoids a body remaining approved on a minister’s word for an indefinite period of time, which the Democrats believe would be a somewhat tenuous position. I seek leave to also include amendment (99) in that block of amendments.

Leave granted.

Senator STOTT DESPOJA—I move:

(99) Clause 169-25, page 156 (line 26), omit “The provider”, substitute “At least 4 weeks prior to the commencement of the unit, the provider”.

This amendment ensures that the provider must publish the census date and the EFTSL value at least four weeks prior to the commencement of the unit.

Senator Carr—That is a dangerous amendment. It has to be voted down by the deal!

Senator STOTT DESPOJA—I will accept that interjection. Senator Carr said, sarcastically, that it is a dangerous amendment and should be voted down. Of course, the point he is making is that these amendments all tighten the accountability provisions of the act. They are not scary, and they are not dangerous. They are actually very sensible amendments that just tweak and tighten aspects of the bill. I understand the reasons that they cannot be voted against, and it is not necessarily to do with their merit—we would not even know, because there is not any debate taking place on the amendments and I am moving them en bloc. It is an interjection that is well made, Senator Carr, and understood by most of us in the chamber.

Amendment (94) relates to the administration arrangements. This amendment places a time limit on the period that a provider has to make a decision and to notify the person of a decision within two weeks in response to a request for a correction of notice. An incorrect notice can have a severe effect on students and, if a correction is to be made, it should be made as quickly as possible—we suggest within a limit of two weeks. Again, this is not a particularly scary amendment but it is one that makes sense.

Amendment (98) is the last in that group of amendments that I moved in relation to administration. This amendment removes ministerial discretion and ensures that 50 per cent of all HECS-HELP exempt places will be allocated to equity groups, national priorities or areas where there is an unmet demand.
for graduates. Again, it is an equity provision as well as an administrative one. I look forward to seeing these amendments supported on the grounds that they are valuable amendments, but I do not think that is the will of the chamber. However, I look forward to hearing in the days after this bill passes how people justified voting against these amendments. In the interests of time, I have moved all of those amendments on behalf of the Australian Democrats.

Senator CARR (Victoria) (10.50 p.m.)—The opposition will support these amendments. I know they are incredibly dangerous. It is extraordinarily revolutionary—amazingly scandalous—to propose that there should be a limit on the amount of time it takes to notify someone of a decision—that there should be proper accountability measures for public servants—because these are measures that are all part of the deal. They are not to be considered here. They are all part of the deal the Independents have signed up to. It does not really matter what you say, Senator Stott Despoja, it is quite clear that the arrangement have been made and there is no point considering them. Quite clearly, this is not to be considered. That was the position before you moved them, that was the position before any of the Independent senators saw them, and that is what the Vice-Chancellors Committee signed up to. They have signed up to this, sight unseen. Frankly, I think it leaves you in a very weak position.

Senator NETTLE (New South Wales) (10.51 p.m.)—I rise to say that the Australian Greens will be supporting these accountability amendments put forward by the Democrats.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that Australian Democrat amendments (94), (98), (99), (113), (114), (115), (116) and (117) be agreed to.

Question negatived.

Senator STOTT DESPOJA (South Australia) (10.51 p.m.)—by leave—I move Democrat amendments (100), (105) and (105A):

(R105) Clause 179-10, page 162 (line 27) at the end of paragraph (d) add:

; and (e) the disclosure, or copying or recording, of information breaches:

(i) in the case of a Commonwealth officer, the Information Privacy Principles; or

(ii) in the case of an officer of a higher education provider, the National Privacy Principles.

(R105A) Page 163 (after line 1), at the end of clause 179-10, add:

(2) For the purposes of this section:

(a) the Information Privacy Principles are the principles contained in the Privacy Act 1988; and

(b) a disclosure, or copying or recording, of information breaches the Information Privacy Principles:

(i) if it is contrary to, or inconsistent with, the Information Privacy Principles; and

(ii) regardless of whether the Privacy Act 1988 applies to the body or authority in relation to which the officer who discloses, copies or records the information, is an officer within the meaning of subsection 179-15(2).

(3) For the purposes of this section:

(a) the National Privacy Principles are the principles contained in Schedule 3 to the Privacy Act 1988; and
(b) a disclosure, or copying or recording, of information breaches the National Privacy Principles:

(i) if it is contrary to, or inconsistent with, the National Privacy Principles; and

(ii) regardless of whether the *Privacy Act 1988 applies to the *higher education provider in relation to which the *officer who discloses, copies or records the information, is an officer within the meaning of subsection 179-15(3).

This is a part of the bill that received a great deal of attention during the Senate inquiry, and certainly in our second reading contributions. Due to the expedient way in which we are dealing with the legislation tonight it has not been a focus, but it is an important part and it relates to privacy. As the privacy spokesperson as well as the higher education spokesperson for the Australian Democrats, the aspects of the bill that I think were a surprise to many of us—in fact, they caught us by surprise initially—were the intrusive and quite anti privacy provisions. The Privacy Act currently does not actually apply to higher education providers that are established by state legislation. It applies only to private providers such as Bond University, for example. The amendments that the Democrats are moving will augment the provisions in the bill that concern the handling of personal information—something I am sure we would all agree is a particularly important issue. If Senator Harris’s comments on privacy issues in the past are anything to go by, I hope that he will both consider and support the amendments before the committee.

Currently, the bill provides that ‘it is an offence to disclose, copy or record information other than in the course of official employment’. These amendments seek to increase the level of protection for personal information by ensuring that any handling of information that is inconsistent with the Privacy Act will not be considered in the course of official employment. Given that the vast majority of higher education providers are currently not bound by the Privacy Act, the amendments are expressed to apply regardless of whether the Privacy Act applies to the higher education provider in question.

The current provisions regarding personal information apply to officers, which includes officers of higher education providers and officers of Commonwealth agencies. This complicates the amendment a little, since Commonwealth agencies and private organisations have different obligations under the Privacy Act. Commonwealth agencies are required to comply with the information privacy principles, while private organisations are required to comply with the national privacy principles. These amendments seek to reflect these differing obligations by requiring Commonwealth officers to comply with the IPPs and officers of higher education providers to comply with the NPPs. This is to ensure that, for example, a Commonwealth officer who in the course of his or her employment is required to comply with the IPPs does not have a different standard to comply with for the purposes of this regime. However, because of the dual standard, the amendments could be attacked—I recognise that—in allowing for different standards of protection regardless of who is handling the information at any given time. But there is no way to really get around this, I am afraid. At least the amendments recognise that the privacy issue is an important one. I was hoping that there would be a bigger debate on these issues or some assurance coming from the government that the handling of personal and sensitive information would be done with a greater level of protection.
I should add that I did consider including an amendment to the Privacy Act itself, presumably to extend the coverage of the act or its operation to higher education providers. But I think that might be more problematic. I do note, however, that there is a privacy amendment bill coming up in the next sitting, so that might provide an opportunity to explore that issue. Of course, one of the issues is whether the Commonwealth has the constitutional power to extend the act to entities established by state legislation. I hope that the amendments will be considered or at least those Independents who are determining the outcome of this legislation and our amendments will understand that this is an issue of great concern.

I have three amendments that go to the heart of my concerns about privacy. Amendment (100) prevents providers from communicating personal information to the Commonwealth and, more importantly, keeps that information anonymous while still ensuring that duties are performed. Amendment (105) is consequential to amendment (105A), the revised amendment I have circulated. This amendment inserts two new paragraphs that provide for improvements to the privacy provisions in the bill. I have mentioned in some of my comments how we are seeking to do that. I think it is an important issue and I hope there will be some support for these amendments.

Question negatived.

Senator STOTT DESPOTA (South Australia) (10.57 p.m.)—I move Democrat amendment (120):

(120) Clause 238-10, page 196 (after line 2), at the end of the clause, add:

(3) A determination or approval by the Minister or Secretary under Division 16, Division 19, Division 22, Division 41, Division 54, Division 60 and Division 225 is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

This amendment provides for ministerial or secretarial determinations made under divisions 16, 19, 22, 41, 54, 60 and 225 to be made disallowable. Again, I think this is another appropriate accountability mechanism. I am starting to feel as though I am talking to myself.

Senator Carr—A lot of people outside this place would understand that; a lot of people would understand what is being done here tonight.

Senator STOTT DESPOTA—Thank you, Senator Carr. I will take your interjection: people do understand what is happening here tonight. Normally there would be much greater debate on such amendments and we would be debating them in much more detail. But, as the four Independents are not willing to entertain additional amendments—not those that have been moved by the Democrats, the opposition or the Greens anyway—I again make the comment that this legislation is unprecedented in its intrusion into university and academic autonomy and in the great deal of ministerial discretion that it affords. This amendment is just one way of putting a check on that level of ministerial discretion.

Senator CARR (Victoria) (10.59 p.m.)—The opposition will be supporting this amendment. We have a situation here tonight where the Labor Party has moved the better part of 90 amendments and not one of those 90 amendments has been supported by any of the Independent senators, irrespective of the quality, irrespective of the merits and irrespective of the need. The Democrats have moved the better part of 120 amendments, as I am advised, and I am sure that the Greens have moved a very significant number as well. So, in total, about 300 amendments have been moved, but 120 government amendments have been carried.
This is the perfect legislation. We have seen 120 government amendments supported and no consideration whatsoever given to any amendments other than the government amendments. It just strikes me as extraordinary that the Independent senators could be signed up to such a deal, and to do so aided and abetted by the Vice-Chancellors Committee strikes me as truly incredible. This is yet another amendment—very simple, very straightforward, with no argument put against it—to be voted down. Why? Because it is not part of the deal.

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.00 p.m.)—by leave—I move Democrat amendments (50), (51), (52), (53) and (121):

(50) Clause 41-1, page 55 (line 6), omit “other eligible bodies”, substitute “other bodies corporate listed in Schedule 2”.

(51) Clause 41-10, pages 55 and 56 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Item</th>
<th>Purpose of grant</th>
<th>Who is eligible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Grants to promote equality of opportunity in higher education</td>
<td>*Table A providers</td>
</tr>
<tr>
<td>2</td>
<td>Grants to enhance learning and teaching in higher education</td>
<td>*Table A providers</td>
</tr>
<tr>
<td>3</td>
<td>Grants to support national institutes specified in the Other Grants Guidelines for the purposes of this item</td>
<td>*Table A providers</td>
</tr>
<tr>
<td>4</td>
<td>Grants to support the capital development projects of higher education providers</td>
<td>*Table A providers</td>
</tr>
<tr>
<td>5</td>
<td>Grants to meet the Commonwealth’s share of the cost of higher education providers’ superannuation liabilities</td>
<td>*Table A providers</td>
</tr>
</tbody>
</table>

(52) Clause 41-20, page 57 (after line 32), at the end of the clause, add:

(2) In the performance of the Minister’s function to impose conditions on grants and make grants under this Part, the Minister shall take into account the specific purpose of the grant and promote the objects of the Act, including in relation to universities, those of the objects which recognise the independence and autonomy of universities.

(53) Clause 41-25, page 58 (lines 1 to 15), omit “higher education provider” (whenever occurring), substitute, “body corporate specified in section 16-20, 16-25 or Schedule 2”.

(121) Page 208 (after line 20), at the end of the bill, add:
Schedule 2—Bodies corporate eligible for Other Grants under Part 2-3

Academy of the Social Sciences in Australia
Australian Academy of Science
Australian Academy of Technological Sciences and Engineering
Australian Academy of the Humanities
Australian Council for Education Research
Australian Universities Quality Agency
Commonwealth Study Conferences (Australia)
General Sir John Monash Foundation
Graduate Careers Council
National Academies Forum
Open Learning Australia
The Australian and New Zealand Association for the Advancement of Science

These amendments relate to 'other grants'. Amendment (50), along with most others in this part, aims to limit the providers who can access other grants. It will remove, again, some of the ministerial discretion that is a part of this bill by listing all bodies that are eligible for grants under this part. There is $1.3 billion available in grants under this section, and the Australian Democrats believe there needs to be a bit more detail in this legislation as to whom the minister can provide these grants to. We believe this money should be available to a specific list of bodies for the purposes listed in 41-10 only. There is no reason why these details should not be in the legislation, in fact there are very strong arguments why they should be in the legislation. The Democrats find part 2-3 of this bill to be quite loose, if you like, in its direction, particularly when we are talking about such a large funding pool.

The next amendment removes some of the ministerial discretion in this bill by listing all the bodies that are eligible for grants under this part. If the minister wishes to provide an 'other grant' to a body not on the list then the minister can do that with parliamentary approval by amending the legislation. So this amendment, again, is removing or curtailing some of that ministerial discretion. We have removed the original item 2 from this table because we believe that no further funding should be linked to productivity increases. Staff have made significant gains over the past decade. According to the NTEU, there has been a 44 per cent increase in the ratio of students to teaching staff in universities since 1994. McInnes found that job satisfaction levels of academics had fallen from 67 per cent in 1993 to 51 per cent in 1999. Forty per cent of academics work more than 50 hours per week. Staff have carried the burden of declining resources and increased student loads as a consequence of changes that have already been made to the Higher Education Funding Act in the last seven years in which the Howard government has been in office. The workplace reform program has already been running since 2000, and I think most senators would agree that university staff have already had enough squeezed out of them.

Amendment (52) is in keeping with our amendments to the purposes of grants in 41-10. The effect of this amendment is to add a new proposed subsection 41-20(2) that requires the minister, in the performance of his or her functions, to impose conditions on grants and, when making grants under part 2-3, to take into account the specific purpose of the grant and work to promote the objects of the act, including those in relation to universities. The next amendment limits the conditions in proposed section 41-25 for providing grants to bodies listed in schedule 2. The conditions for providing grants to listed providers are detailed in our amendment to 41-20. Finally, Democrat amendment (121) provides for a new schedule to be inserted into
the bill that lists those bodies corporate eligible for other grants that are referred to in amendment (51). I commend these amendments to the Senate and look forward to hearing the views of all parties represented as to why they do or do not support the amendments.

Senator CARR (Victoria) (11.05 p.m.)—The opposition supports these amendments as being sensible and straightforward, reasonable, appropriate and necessary.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.05 p.m.)—I think the simplest thing to say to Senator Stott Despoja is—

Senator Carr—They’re not part of the deal. Why don’t you tell the truth?

Senator VANSTONE—I was going to offer an answer, but I cannot be bothered having a debate over another voice, so I will give her an answer another day, privately.

Senator NETTLE (New South Wales) (11.06 p.m.)—The Australian Greens will be supporting these amendments.

Senator STOTT DESPOJA (South Australia) (11.06 p.m.)—Mr Temporary Chairman, I am quite happy to hear the response now. I was not yelling over you, I genuinely—

Senator Vanstone—No, move on.

Senator STOTT DESPOJA—I would appreciate it if the minister gave a response. If nothing else, it would enable me to work out what amendments are remaining so I can group them accordingly and thus move this debate along, which I was trying to do. We have not got bogged down in answers and debates in relation to this particular section. I am just curious to hear the response. If the minister would prefer to table it, that is okay, but I would like to know the rationale as to why ‘other grants’, which deals with a lot of money—$1.3 billion—cannot have more specific criteria and ministerial direction.

Senator MURPHY (Tasmania) (11.07 p.m.)—I would like to request that the minister give the response that she was going to give. It would be appropriate to give it. The minister can of course ignore interjections from Senator Carr, but it would be appropriate for us to hear something from the minister.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.07 p.m.)—I think you are going to be disappointed because all I was going to say to Senator Stott Despoja was that the government believes that the amendments she is referring to are overly restrictive. Part of the reason for not bothering to continue was that I was not going to say a lot anyway, but that was what I was going to say, Senator Murphy. Since you asked me so gently and in such a melodious and pleasant voice, I thought I would give you the answer.

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.09 p.m.)—by leave—I move Democrat amendments (3) to (9) on sheet 3190:

(3) Clause 36-35, page 50 (line 26), omit “50%”, substitute “75%”.

(4) Clause 46-40, page 63 (line 24 to 27), omit the clause, substitute:

46-40 Maximum payments for Commonwealth scholarships

“The total payments made under this Part in respect of the year 2004 must not exceed $200,250,000. Payments in subsequent years will be indexed in accordance with Part 5-6”.

CHAMBER
(5) Clause 93-10, pages 88 and 89 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Item</th>
<th>Funding clusters</th>
<th>Maximum student contribution amount per place</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Law</td>
<td>$6,283</td>
</tr>
<tr>
<td>2</td>
<td>Accounting, Administration, Economics, Commerce</td>
<td>$5,367</td>
</tr>
<tr>
<td>3</td>
<td>Humanities</td>
<td>$3,768</td>
</tr>
<tr>
<td>4</td>
<td>Mathematics, Statistics</td>
<td>$5,367</td>
</tr>
<tr>
<td>5</td>
<td>Behavioural Science, Social Studies</td>
<td>$3,768</td>
</tr>
<tr>
<td>6</td>
<td>Computing, Built Environment, Health</td>
<td>$5,367</td>
</tr>
<tr>
<td>7</td>
<td>Foreign Languages, Visual and Performing Arts</td>
<td>$3,768</td>
</tr>
<tr>
<td>8</td>
<td>Engineering, Science, Surveying</td>
<td>$5,367</td>
</tr>
<tr>
<td>9</td>
<td>Dentistry, Medicine, Veterinary Science</td>
<td>$6,283</td>
</tr>
<tr>
<td>10</td>
<td>Agriculture</td>
<td>$5,367</td>
</tr>
<tr>
<td>11</td>
<td>Education</td>
<td>$3,768</td>
</tr>
<tr>
<td>12</td>
<td>Nursing</td>
<td>$3,768</td>
</tr>
</tbody>
</table>

(6) Clause 90-5, page 86 (lines 5 to 8), omit paragraph (b), substitute:

(b) a citizen of New Zealand who will be resident within Australia for the duration of the unit; or

c) a permanent visa holder who will be resident within Australia for the duration of the unit.

(7) Clause 104-1, page 94 (after line 6), after “if”, insert “the student is studying at postgraduate level”.

(8) Clause 143-1, page 127, (line 24), omit paragraph (3)(b).

(9) Clause 154-20, pages 141 and 142 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Item</th>
<th>For HECS repayment income in the range:</th>
<th>Percentage rate to be applied to HECS repayment income:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Below $38,168</td>
<td>0.0%</td>
</tr>
<tr>
<td>2</td>
<td>$38,169 - $42,973</td>
<td>3.0%</td>
</tr>
<tr>
<td>3</td>
<td>$42,974 - $45,233</td>
<td>3.5%</td>
</tr>
<tr>
<td>4</td>
<td>$45,234 - $48,622</td>
<td>4.0%</td>
</tr>
</tbody>
</table>

Amendment (3) will maintain the current level of 25 per cent in relation to full-fee paying places. Amendment (4) will double the amount of the accommodation and education cost scholarships and will increase the number 2½ times, providing $75 million more than the government’s amended funding in, again, a key area. A lot of people have talked about access and equity tonight and the importance of scholarships in providing access to education. Let us give some real funding for those scholarships and increase their availability.

Other amendments go to the heart of funding clusters. Amendment (6) essentially ensures that international students are able to access HECS-HELP. We believe that international students pay considerable amounts of money to move to Australia in order to study and, with restricted income-earning opportunities, they should have some government support. That is why we propose to extend this to those students. This amendment extends HECS-HELP to Australian permanent visa holders and New Zealand citizens, which will essentially restore it to the way it was prior to the Howard government coming to office.

Australian citizens have had access to education loans and government support in New Zealand, after a waiting period of course, as we know. We should provide a complementary opportunity for our neighbours. Permanent residents or visa holders pay tax. Therefore, we believe they have an entitlement to some government
support. Many of these people want to become citizens of Australia. By not extending support for education the government is saying that we do not necessarily want these new citizens to have higher education qualifications.

Amendment (7) and certainly amendment (8) mirror government amendment (15), I believe. Amendment (9) sets out the HECS repayment income bracket, starting at the lowest average weekly earning measure, which includes full-time and part-time employment.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.13 p.m.)—There are a few things I would like to say in relation to equity issues. Firstly, the reform package will provide increased funding to the Higher Education Equity Program of $4.5 million annually from 2005 and $6 million in 2003. Secondly, $223.1 million will be provided for Commonwealth learning scholarships for students from low socioeconomic backgrounds, Indigenous students and students from rural and regional areas. By 2007, approximately 17,630 students—an interesting approximation; not 17,631—will be in receipt of a Commonwealth Education Costs Scholarship and approximately 13,595 students will be in receipt of a Commonwealth Accommodation Scholarship, and they will be exempt from social security income tests.

The funding for the Additional Support for Students with Disabilities program will be increased by $3.2 million annually from 2005 and by $3 million in 2003. For Senator Crossin’s benefit, although she might have gone home, I noticed that when we were discussing Batchelor she did not mention that the package includes specific measures for Indigenous students, including: increasing funding of $10.4 million over three years to 2007 for the Indigenous Support Program; the establishment of an Indigenous Higher Education Advisory Council with funding of $260,000 a year to be provided in 2003; and funding for five national Indigenous staff scholarships each year to enable academic and general staff to take one year of leave from their university employment to undertake full-time higher education study in their chosen academic or professional area. Each scholarship will provide approximately $10,400 for tuition fees and a non-taxable stipend of approximately $20,900. I thought it might be relevant to mention that at this point.

Senator STOTT DESPOJA (South Australia) (11.15 p.m.)—May I clarify with the minister whether Democrat amendment (8) on sheet 3209 is the same as government amendment (15) on sheet PA 239?

Senator Vanstone—I will get some advice on that issue. Perhaps you might like to say something useful in the meantime.

Senator STOTT DESPOJA—I do not hear that invitation often from Senator Vanstone. It must have been the melodious bit earlier. Perhaps I will use this opportunity to cover some process issues. I think the best way to proceed after this, apart from the industrial relations issues, is to move en bloc the remaining Australian Democrats amendments. Senator Carr, is that agreeable to you? You may want to have a comprehensive and sophisticated debate about the issues, and a meaningful discussion of each amendment in turn, given most of them relate to really important issues like scrutiny, ministerial discretion, interference in academic autonomy, university powers, what defines a university, how we pay them, how we distribute money, whether or not students have to repay a
certain amount at a certain time—but if you do not want to I understand.

The TEMPORARY CHAIRMAN (Senator Brandis)—You may seek leave to move together the remaining Democrat amendments other than amendments (3) through to (9), but if you are going to do that you are going to have to seek leave to withdraw, for the time being, (3) to (9) because you have already moved them. If you want to change the sequence in which you deal with these, that is the procedure you will have to follow.

Senator STOTT DESPOJA—I do understand that. Forgive me, I did not want to give the impression that I wanted to move all those remaining Democrat amendments now. I was just pre-empting that that is perhaps how we could proceed after we had dealt with amendments (3) to (9). I was just seeking advice from my colleagues as to whether or not that would be an appropriate way to proceed. In the interim, I think the minister may have an answer.

Senator CARR (Victoria) (11.17 p.m.)—Given the perfidious arrangements that have been entered into tonight, I do not really think it matters how you proceed, Senator Stott Despoja. Frankly, what is happening here tonight is a mockery of the whole parliamentary process. The Senate is supposed to be the house of review. It is supposed to be the place where we examine in detail the consequences of government actions. But the nature of the deal done—this sleazy arrangement that has been entered into in the dead of night—means that that function has been stripped away. So, Senator, I would suggest to you that it does not matter at all. We would be happy to give leave if that is what you wish to do.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.18 p.m.)—My advice is that our amendment (15) and your amendment (8) are not the same. On the face of them, they refer to different sections.

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.18 p.m.)—Mr Temporary Chairman, can you clarify that when we suspended for dinner this evening we were dealing with Democrat amendment (37) standing in my name?

The TEMPORARY CHAIRMAN (Senator Brandis)—On advice from the Clerk, the answer to your question is no. I am advised by the Clerk that that Democrat amendment has not yet been moved.

Senator STOTT DESPOJA—The reason I asked for that clarification is that that amendment mirrors an opposition amendment in relation to the linking of the IR provisions to that additional funding. I would ask that Democrat amendment (37) remain not moved at this stage. I seek leave to move all remaining Australian Democrats amendments together other than amendment (37).

Leave granted.

Senator STOTT DESPOJA—I move the remaining Australian Democrat amendments and request for an amendment on sheet 3189 revised and amendment (1) on sheet 3256:

(5) Clause 3-10, page 5 (line 19), omit paragraph (b).

(8) Clause 16-30, page 14 (line 18), omit “or *tuition fee”.

(39) Clause 33-40, page 44 (after line 16), at the end of the clause, add:

(6) The Minister will report to the Parliament any special purpose advances, including the basis of the decision and the amount advanced.

(40) Clause 36-5, page 45 (line 23) to page 46 (line 1), omit subclauses (3) and (4).
Subdivision 36-G—Reporting requirements

36-75 Reporting by Minister

The Minister must report on the operations of the Commonwealth Grants Scheme in the Department of Education, Science and Training annual report.

46-22 Indigenous student scholarships

In providing Indigenous student scholarships, the Minister must have regard to advice from the Indigenous Higher Education Advisory Council.

(R59) Clause 46-40, page 63 (lines 25 to 27) to page 64, omit the clause and the table, substitute:

The total payments made under this Part in respect to the year 2004 must not exceed $480,600,000. Payments in subsequent years are to be indexed in accordance with Part 5-6.

(R74A) Clause 104-1, page 94 (line 12 to 13), omit paragraph (d).

(R84) Clause 154-1, page 139 (line 12), omit “an *accumulated “FEE-HELP/OS-HELP debt, or both”.

(R79) Clause 137-5, page 117 (line 1), after “96-5”, insert “or Part 3-4”.

(R82) Clause 151-10, page 137, (lines 24 and 25) omit paragraph (2)(b).

(83) Clause 151-10, page 137 (line 30) to page 138 (line 2), omit paragraph (2)(d).

(61) Clause 60-5, page 69 (lines 4 to 6), omit subclause (2).

(63) Clause 65-1, page 70 (line 15), omit “3”, substitute “2”.

(64) Clause 65-1, page 70 (lines 19 to 21), omit the second dot point.

(65) Clause 65-1, page 70 (line 27), omit “and FEE-HELP assistance”.

(67) Clause 87-1, page 84 (line 5), omit “may be”, substitute “are”.

(68) Clause 87-1, page 84 (line 6), omit “for which they are Commonwealth supported,”.

(69) Clause 90-1, page 85 (lines 7 and 8), omit paragraph (a).

(R79A) Clause 137-1, page 117 (line 6), omit paragraph (b).

(R79) Clause 137-5, page 117 (line 11), after “96-5”, insert “or Part 3-4”.

(R82) Clause 151-10, page 137, (lines 24 and 25) omit paragraph (2)(b).

(83) Clause 151-10, page 137 (line 30) to page 138 (line 2), omit paragraph (2)(d).

(R78) Clause 134-1, page 116 (lines 9 to 12), omit all words from “FEE-HELP debts” to “(see Part 4-2).”, substitute “Debts incurred as a result of OS-HELP assistance are incorporated into the person’s accumulated HECS-HELP debt. This accumulated debt forms the basis of working out the amounts that the person is obliged to repay (see Part 4-2).”.

(R79A) Clause 137-1, page 117 (line 6), omit paragraph (b).
(R86) Clause 154-15, page 140 (line 26) to page 141 (line 2), omit paragraph (1)(a), substitute:

(a) the person’s accumulated HECS-HELP debt (if any) referred to in paragraph 154(1)(b) in relation to that income year; or

(92) Page 151 (after line 15), at the end of Part 5-1, add:

Division 165—Higher Education Funding Council

165-1 Functions
The *Higher Education Funding Council shall inquire into, provide information and make recommendations to the Minister with respect to:

(a) the total amount of all grants to higher education bodies that the Commonwealth should provide under Parts 2-2, 2-3 and Part 2-4 for the year 2008 and for each year thereafter; and

(b) the grants that should be made available to each higher education body under Parts 2-2, 2-3 and 2-4 for the year 2005 and for each year thereafter; and

(c) any other matter relating to the provision of funds to higher education bodies that may be referred by the Minister or which the Council considers to be a matter that should be inquired into by the Council.

165-5 Criteria for recommendations
In performing its functions under this Act to make recommendations the Higher Education Funding Council shall apply the criteria specified by section 30-8 other than that specified in paragraph (a).

165-10 Annual and triennial allocations
Before the commencement of a year and in the performance of its functions under paragraphs 165-1(a) and (b), the Higher Education Funding Council shall:

(a) make recommendations in the form of an annual allocation which:

(i) allocates a specified *number of Commonwealth supported places to a *higher education provider for that year; and

(ii) specifies the distribution of those places between the *funding clusters; and

(iii) specifies the number of those places that have a regional loading and/or a medical student loading; and

(iv) specifies the number of places for each national priority for which the provider should be allocated places; and

(b) make such recommendations having regard to an annually revised triennial allocation developed by the Council with each *higher education provider. The triennial plan shall specify the projected allocations for each higher education provider for the matters referred to in paragraph (a) for each year of the triennium.

165-15 Consultation
In the performance of its functions, the Higher Education Funding Council shall consult with the Minister and with *higher education providers and may consult with such other persons, bodies and authorities as it considers necessary.

165-20 Provision of information
The Minister shall provide the Higher Education Funding Council with information in the possession or control of the Minister which is relevant to the performance by the Council of its functions and which is requested by the Council.
165-25 Reports by Council

(1) The Higher Education Funding Council shall provide to the Minister reports containing information and recommendations relating to the performance of its functions under section 165-1.

(2) The Minister shall, as soon as is practicable, cause such reports to be laid before each House of the Parliament.

(95) Clause 169-15, page 154 (line 28) to page 155 (line 6), omit subclause (2).

(96) Clause 169-15, page 155 (line 8), omit “or a *tuition fee”.

(97) Clause 169-20, page 155 (line 14) to page 156 (line 13), omit “and *tuition fees” (wherever occurring).

(101) Clause 174-5, page 159 (line 3), omit “The Administration Guidelines”, substitute “For *Table B providers, the Administration Guidelines”.

(102) Clause 174-5, page 159 (after line 7), at the end of the clause, add:

(5) *Table A providers do not need to meet the requirements of subsection (4).

(103) Clause 174-10, page 159 (line 29), omit “The Administration Guidelines” substitute “For *Table B providers, the Administration Guidelines”.

(104) Clause 174-10, page 159 (after line 33), at the end of the clause, add:

(5) *Table A providers do not need to meet the requirements of subsection (4).

(118) Clause 238-10, page 196 (table item 4), omit the table item.

(11) Clause 73-20, page 75, at the end of the clause, add:

(4) To avoid doubt, where a student is accepted into an honours program or an undergraduate degree with a prerequisite of holding another undergraduate degree, they shall be credited with an Additional Learning Entitlement equivalent to the full time duration of the program.

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.20 p.m.)—The Australian Democrats also oppose various clauses in the following terms:

(47) Clause 36-35, page 50 (line 21) to page 51 (line 13), TO BE OPPOSED.

(48) Subdivision 36-E, clause 36-55, page 53 (line 1) to page 54 (line 2), TO BE OPPOSED.

(71) Clause 90-5, page 86 (lines 1 to 15), TO BE OPPOSED.

(75) Part 3-3, clauses 101-1 to 110-5, page 93 (line 2) to page 107 (line 18), TO BE OPPOSED.

(80) Clause 137-10, page 118 (lines 1 to 17), TO BE OPPOSED.

(81) Division 143, clauses 143-1 to 143-30, page 127 (line 2) to page 134 (line 13), TO BE OPPOSED.

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.20 p.m.)—I suggest that Democrat amendment (37) would be best dealt with once we have resolved opposition amendment (38) that deals with similar issues. I am assuming that we have to go back at some point to the issue of industrial relations, and I understand there have been amendments circulated by other senators. We should probably deal with industrial relations, given that
that seems to be the hinge on which this legislation is balancing.

Senator CARR (Victoria) (11.21 p.m.)—Opposition amendment (38) goes to the issue of removing from this bill any need to have any reference to AWAs or any other measure that means that the universities have to be compliant with a government policy on industrial relations. What I have heard and seen of the government’s amendments tonight suggests to me that, in this bill, there will still be a proposition that universities must be compliant with government industrial relations policies. This can move over time to mean whatever the government wishes it to mean. That is the nature of that clause. Nothing I have seen changes that.

Furthermore, the proposed fix for industrial relations does not change the fact that, under this bill, individual institutions can be required to meet additional conditions for the granting of moneys. This means that, institution by institution, the government may choose to implement an industrial relations policy different to the agreement struck here tonight. The agreement struck here tonight will only live as long as this particular minister is in office and this particular cabinet chooses to support the policy, because the provisions of this bill will allow for the power to be there and to be exercised—to impose a government’s industrial relations policy at a future point. That is the deal you signed up to. That is not a position we support.

Senator MURPHY (Tasmania) (11.23 p.m.)—I am not sure which amendment Senator Carr has read. The government amendment on sheet RE249 has in it conditions with respect to national governance protocols. In respect of industrial relations it says:

... the higher education provider’s certified agreement, made and certified after 22 September 2003, includes the following clause: “The provider may offer AWAs in accordance with the Workplace Relations Act 1996…”

That would be the case now if you operated under the Workplace Relations Act. The amendment that I would seek to move goes to clause 30-25—and I will seek leave to amend that slightly with regard to the numbering—and to the funding agreements, and states in part:

(2A) Where the agreement specifies conditions to which the grant is subject, that are additional to the conditions that apply under Division 36, those conditions must not relate to industrial relations matters.

I think that excludes industrial relations matters. It allows higher education providers to offer AWAs if they choose, which is the case now. That is what the Workplace Relations Act is about. It allows any employer to offer an AWA. Whilst I respect Senator Carr’s view and the proposal he has put forward, this ensures equally that industrial relations is not a matter for the government to be saying to universities, ‘You will do this, that or the other in respect of industrial relations.’ It is really that simple.

Senator HARRIS (Queensland) (11.26 p.m.)—To come back to where we were earlier in this debate, it was indicated that a government amendment was being drafted and we have finally received that. The wording is as Senator Murphy has just articulated. If we look at what is happening in the higher education sector now, there would be hardly any higher education providers that do not have individual contracts. Some of them are limited in the number they have, but other universities and providers can have many hundreds of them. The difference between individual contracts and AWAs is that AWAs are registered and may come under a different jurisdiction.
In the higher education sector, we already have a natural move towards individual contracts. As the government amendment that will be moved shortly clearly sets out, there is no prescriptive requirement for the provider to offer an AWA. Even more importantly, if that AWA is offered, there are no prescribed sections or issues that must be contained within it. The opportunity for a higher education provider to enter into an AWA is completely optional, and the content of the AWA—if entered into—is in no way mandated. As I said earlier, we already see multiples of individual contracts that already exist. I acknowledge that they are a common law contract—in other words, a legally binding contract between the person and the university or higher education facility that enters into them, enforceable by law, but they are not registered. To a large degree, that is the only difference. So really what we are doing to some degree is making very clear here what is already happening within the industry. One Nation indicate that we will oppose the opposition’s amendment because we believe that the following government amendment is superior.

Senator CARR (Victoria) (11.30 p.m.)—This second amendment, which the opposition has only just seen at half past eleven, proposes that there be an additional clause put in that the conditions must not relate to industrial relations matters. On the face of it, you would have to say that is pretty good. But what is an industrial relations matter? Where in this bill do I find a definition of what an industrial relations matter is? Is tenure an industrial relations matter? Are there occupational health and safety issues, gender equity issues? Are there questions in terms of equal opportunity employment issues, maternity leave, superannuation and long service leave? Which of these issues would be regarded as industrial relations issues and matters which might be the subject of discussion within the university? Do we mean industrial relations insofar as it relates to the formation of agreements? Do we mean the method by which representation is demonstrated? Is that what you mean by industrial relations? Does it mean access to industrial tribunals? Does it mean access to research resources? None of those things are spelt out in this amendment. That is the problem when you come up with these quick fixes and you try to slip them in here in the dead of night. There are a lot of questions here that remain unanswered. If you think this is the great answer to the problem, I suggest you think again.

Senator HARRIS (Queensland) (11.31 p.m.)—It comes down to a comprehension of the English language and the phrasing of a paragraph. The paragraph clearly says ‘where the agreement specifies conditions to which the grant is subject’. So we are speaking directly to the issue of a grant and, additional to the conditions that apply under division 36, these conditions must not relate to industrial relations matters. So it is clear. You do not have to define the industrial relations matter because the paragraph speaks specifically to the grant. The amendment clearly says that the grant cannot be linked to anything other than the conditions in division 36. So it is very clear. It could not be set out in any manner that would be clearer.

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.33 p.m.)—I move the Democrat amendment on the same issue:

(R37) Clause 33-15, page 40 (lines 3 to 20), omit subclauses (1) and (2), substitute:

The listed provider’s basic grant amount is increased by:

(a) if the grant year is the year 2005—2.5%; and
(b) if the grant year is the year 2006—5%; and
(c) if the grant year is a later year—7.5%.
I have put on record previously our concerns in relation to this issue. Everyone has articulated their concerns. I quoted Professor Ian Chubb in my comments earlier. I notice him sitting in the gallery, no doubt wondering what on earth the outcome of this legislation is going to be, particularly for his and other institutions. But I probably should not speculate on what vice-chancellors are thinking at this point in time. The Democrat request will make the link automatic, as in there is no link of industrial relations and governance requirements to the additional funding. Our request ensures that the Commonwealth grants scheme grants will be increased by 2.5 per cent in 2005, five per cent in 2006 and 7.5 per cent in 2007 without having to meet those industrial relations requirements.

I noticed that Senator Harris referred to a government amendment as being superior. I note that that government amendment, through you, Mr Temporary Chairman, to Senator Harris, still has stipulations in relation to AWAs and workplace relations and various other industrial relations issues. Assuming Senator Murphy’s amendment to that amendment is passed then there will be ‘industrial relations matters’, those three words, contained within that amendment. Senator Carr has already raised a question about what that means. This request gives us the opportunity to remove that link completely but at the same time ensure that that Commonwealth grants scheme money is available. I commend the request to the chamber.

Question negatived.

Senator NETTLE (New South Wales) (11.35 p.m.)—I take this opportunity, as we have been saying tonight, to try for the third time to remove these conditions tying funding to universities to a university’s requirement to meet the industrial relations vision put up by this government. Australian Greens amendment (4) on sheet 3202 opposes clause 35-15 in the following terms:

(4) Clause 33-15, page 40 (lines 1 to 20), TO BE OPPOSED.

Question negatived.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.36 p.m.)—It might now be appropriate to move government amendment (1) on sheet RE249. I move:

(1) Clause 33-15, page 40 (lines 3 to 13), omit subclause (1), substitute:

(1) A higher education provider’s *basic grant amount for a year is increased under this section if:

(a) the Commonwealth Grant Scheme Guidelines impose on higher education providers requirements to be known as the National Governance Protocols; and

(b) the higher education provider’s certified agreement, made and certified after 22 September 2003, includes the following clause: “The provider may offer AWAs in accordance with the Workplace Relations Act 1996”; and

(c) the Minister is satisfied that the provider met the requirements in paragraphs (a) and (b) as at a date, specified in the Commonwealth Grant Scheme Guidelines, in the year preceding that year.

Question agreed to.

Senator MURPHY (Tasmania) (11.36 p.m.)—I move my amendment on sheet 3254:

(1) Clause 30-25, page 37 (after line 5), after subclause (2) insert:

(2B) Where the agreement specifies conditions to which the grant is subject,
that are additional to the conditions that apply under Division 36, those conditions must not relate to industrial relations matters.

Question agreed to.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (11.37 p.m.)—by leave—I move government amendments and requests on sheet PA234 revised and sheet PA239:

Sheet PA234 Revised—

(50) Clause 36-15, page 48 (lines 12 to 14), omit paragraph (c), substitute:

(c) the unit forms part of a course to which a determination under subsection (2) applies.

(53) Clause 36-35, page 50 (line 28), after “provides”, insert “for domestic students”.

(54) Clause 36-35, page 50 (lines 30 to 32), omit subparagraph (1)(a)(i), substitute:

(i) a course of study to which a determination under subsection 36-15(2) applies; or

(55) Clause 36-35, page 51 (line 3), after “provider”, insert “for domestic students”.

(56) Clause 36-55, page 53 (line 10), omit “Commonwealth Grant Scheme Guidelines”, substitute “Tuition Fee Guidelines”.

(57) Clause 36-55, page 53 (lines 19 and 20), omit “Commonwealth Grant Scheme Guidelines”, substitute “Tuition Fee Guidelines”.

(58) Clause 41-10, page 56 (table item 6, column 2), omit “meet the Commonwealth’s share of”, substitute “assist with”.

(59) Clause 41-45, page 59 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Item</th>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2005</td>
<td>$1,345,931,000</td>
</tr>
<tr>
<td>2</td>
<td>2006</td>
<td>$1,460,951,000</td>
</tr>
<tr>
<td>3</td>
<td>2007</td>
<td>$1,381,822,000</td>
</tr>
</tbody>
</table>

Maximum payments for Commonwealth Scholarships

<table>
<thead>
<tr>
<th>Item</th>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2004</td>
<td>$124,212,000</td>
</tr>
<tr>
<td>2</td>
<td>2005</td>
<td>$148,337,000</td>
</tr>
<tr>
<td>3</td>
<td>2006</td>
<td>$172,754,000</td>
</tr>
<tr>
<td>4</td>
<td>2007</td>
<td>$197,481,000</td>
</tr>
</tbody>
</table>

(60) Page 60 (after line 3), at the end of Part 2-3, add:

41-50 Grant amounts is disallowable instrument

(1) Before the start of a year, the Minister must cause a list to be prepared setting out the maximum amounts of all grants which may be paid in the following year for each purpose of grant specified in the table in section 41-10.

(2) The list is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(61) Clause 46-20, page 62 (lines 14 and 15), omit paragraph (2)(d).

(62) Clause 46-40, page 64 (table), omit the table, substitute:

Maximum payments for other grants under this Part

<table>
<thead>
<tr>
<th>Item</th>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2005</td>
<td>$1,345,931,000</td>
</tr>
<tr>
<td>2</td>
<td>2006</td>
<td>$1,460,951,000</td>
</tr>
<tr>
<td>3</td>
<td>2007</td>
<td>$1,381,822,000</td>
</tr>
</tbody>
</table>

(80) Clause 73-1, page 73 (line 7), at the end of paragraph (b), insert “and”.

(81) Clause 73-1, page 73 (after line 7), after paragraph (b), insert:

(c) any "life long SLE that the person has under section 73-22;".

(82) Page 75 (after line 8), after clause 73-20, insert:

73-22 Life long SLE

(1) A person has a "life long SLE in the circumstances specified in the Student Learning Entitlement Guidelines.
(2) The amount of the "life long SLE" is an amount (expressed in "EFTSL") worked out in accordance with the Student Learning Entitlement Guidelines.

(83) Clause 76-1, page 76 (lines 23 and 24), omit "; see section 76-5", substitute "or life long SLE; see sections 76-5 and 76-10".

(84) Page 77 (after line 30), at the end of Division 76, add:

76-10 Reducing a person's life long SLE

(1) If a person has a "life long SLE", that life long SLE is not reduced under section 76-1 in relation to a unit of study unless:

(a) if the person does not have an "additional SLE"—the person's "ordinary SLE" is less than the "EFTSL" value of the unit; and

(b) if the person has an additional SLE—the sum of the person's ordinary SLE and the person's additional SLE is less than the EFTSL value of the unit.

(2) If:

(a) a person has both:

(i) a "life long SLE"; and

(ii) an "ordinary SLE" or an "additional SLE", or both; and

(b) the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are insufficient) to "cover a unit of study in which the person is enrolled;

then, in reducing the person's "SLE" under section 76-1 to take account of the unit:

(c) the person's ordinary SLE or additional SLE is reduced (or both the person's ordinary SLE and the person's additional SLE are reduced) to zero; and

(d) the person's life long SLE is reduced only to the extent that the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are insufficient) to cover the unit.

(85) Clause 82-10, page 82 (line 18), omit "that is "available", substitute "or "life long SLE that is "available (or the person's ordinary SLE and the person's life long SLE that are available)"

(86) Clause 93-10, page 88 (line 3), omit "is:" substitute "is the amount specified in the following table in relation to the funding cluster in which the unit is included.".

(87) Clause 93-10, page 88 (lines 4 to 15), omit paragraphs (a) and (b).

(88) Clause 104-1, page 94 (line 32), omit "part; and", substitute "part.".

(89) Clause 104-1, page 95 (lines 1 and 2), omit paragraph (1)(j).

(91) Clause 107-1, page 104 (line 10), omit "or 107-15".

(92) Clause 107-10, page 104 (line 29), omit the note.

(93) Clause 107-10, page 105 (line 17), omit the note.

(95) Clause 118-10, page 110 (lines 21 to 24), omit paragraph (b).

(96) Clause 118-10, page 110 (line 25), omit "under that arrangement,.

(97) Clause 118-15, page 111 (lines 1 to 11), omit subclause (2).

(98) Clause 121-1, page 112 (lines 15 to 18), omit subclause (4).

(99) Clause 121-10, page 113 (lines 1 to 4), omit subclause (3).

(103) Clause 169-15, page 154 (line 29), after "require any", insert ""domestic".

(104) Clause 169-15, page 155 (line 4), omit "if the student is a "domestic student—must not require the", substitute "must not require any domestic".

(105) Clause 238-10, page 196 (after table item 10), insert: 11 Tuition Fee Guidelines Part 2-2
(106) Schedule 1, page 202 (after line 14), after the definition of *information system*, insert:

*life long SLE*, of a person, means the amount of *Student Learning Entitlement that the person has under section 73-22, as reduced (if applicable) under Division 76.

Sheet PA239—

(1) Clause 36-15, page 48 (after line 14), at the end of the clause, add:

(2) The Minister may determine in writing that:

(a) a specified undergraduate or postgraduate course is not a *course of study in respect of which students, or students of a specified kind, may be enrolled in units of study as *Commonwealth supported students; or

(b) an undergraduate or postgraduate course of a specified type is not a *course of study in respect of which students, or students of a specified kind, may be enrolled in units of study as *Commonwealth supported students.

(3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course, or a course of that type.

(4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or a course of that type, with the provider.

(5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(2) Clause 36-35, page 50 (lines 26 to 28), omit all the words from and including “50%” to and including “for that year,”, substitute “65%”.

(3) Clause 36-35, page 51 (line 9), omit “50%”, substitute “65%”.

(4) Clause 70-1, page 72 (line 8), omit “5 years”, substitute “7 years”.

(5) Clause 73-5, page 73 (line 14), omit “5 *EFTSL", substitute “7 *EFTSL”.

(6) Clause 73-5, page 73 (line 18), omit “5 *EFTSL", substitute “7 *EFTSL”.

(7) Clause 76-5, page 77 (lines 14 to 30), omit the example.

(8) Clause 93-10, pages 88 and 89, omit the table, substitute:

<table>
<thead>
<tr>
<th>Item</th>
<th>Funding clusters</th>
<th>Maximum student contribution amount per place</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Law</td>
<td>$7,854</td>
</tr>
<tr>
<td>2</td>
<td>Accounting, Administra-</td>
<td>$6,709</td>
</tr>
<tr>
<td></td>
<td>tion, Economics, Commerce</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Humanities</td>
<td>$4,710</td>
</tr>
<tr>
<td>4</td>
<td>Mathematics, Statistics</td>
<td>$6,709</td>
</tr>
<tr>
<td>5</td>
<td>Behavioural Science, Social Studies</td>
<td>$4,710</td>
</tr>
<tr>
<td>6</td>
<td>Computing, Built Environment, Health</td>
<td>$6,709</td>
</tr>
<tr>
<td>7</td>
<td>Foreign Languages, Visual and Performing Arts</td>
<td>$4,710</td>
</tr>
<tr>
<td>8</td>
<td>Engineering, Science, Surveying</td>
<td>$6,709</td>
</tr>
<tr>
<td>9</td>
<td>Dentistry, Medicine, Veterinary Science</td>
<td>$7,854</td>
</tr>
<tr>
<td>10</td>
<td>Agriculture</td>
<td>$6,709</td>
</tr>
<tr>
<td>11</td>
<td>Education</td>
<td>$3,768</td>
</tr>
<tr>
<td>12</td>
<td>Nursing</td>
<td>$3,768</td>
</tr>
</tbody>
</table>

(9) Clause 104-10, page 96 (after line 16), at the end of the clause, add:

(3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course or courses.
(4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or courses, with the provider.

(5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(10) Clause 129-1, page 115 (lines 8 to 11), omit all the words from and including “either” to and including “relates”,” substitute “the person’s accumulated HELP debt”.

(11) Clause 134-1, page 116 (lines 8 to 11), omit all the words from and including “HECS-HELP debts are” to and including “These accumulated debts form”, substitute “HELP debts are incorporated into the person’s accumulated HELP debt. This accumulated debt forms”.

(12) Clause 137-10, page 118 (line 9), omit subclause (2), substitute:

(2) The amount of the FEE-HELP debt is:

(a) if the loan relates to FEE-HELP assistance for a unit of study that forms part of an undergraduate course of study—an amount equal to 120% of the loan; or

(b) if paragraph (a) does not apply—the amount of the loan.

(13) Clause 137-15, page 118 (line 23), after “debt is”, insert “an amount equal to 120% of”.

(14) Division 140, clauses 140-1 to 140-40, page 120 (line 2) to page 126 (line 28), omit the Division, substitute:

Division 140—How are accumulated HELP debts worked out?

Subdivision 140-A—Outline of this Division

140-1 Outline of this Division

(1) There are 2 stages to working out a person’s accumulated HELP debt for a financial year.

Stage 1—Former accumulated HELP debt

(2) The former accumulated HELP debt is worked out by adjusting the preceding financial year’s accumulated HELP debt to take account of:

(a) changes in the Consumer Price Index; and

(b) the HELP debts that he or she incurs during the last 6 months of the preceding financial year; and

(c) voluntary repayments of the debt; and

(d) compulsory repayment amounts in respect of the debt.

(See Subdivision 140-B.)

Stage 2—Accumulated HELP debt

(3) The person’s accumulated HELP debt is worked out from:

(a) his or her former accumulated HELP debt; and

(b) the HELP debts that he or she incurs during the first 6 months of the financial year; and

(c) voluntary repayments of those debts.

(See Subdivision 140-C.)

Note: Incurring that financial year’s accumulated HELP debt discharges the previous accumulated HELP debt and HELP debts under this Part: see section 140-35.

Subdivision 140-B—Former accumulated HELP debts

140-5 Working out a former accumulated HELP debt

(1) A person’s former accumulated HELP debt, in relation to the person’s accumulated HELP debt for a financial year, is worked out by multiplying:

(a) the amount worked out using the following method statement; by
Method statement

Step 1: Take the person’s accumulated HELP debt for the immediately preceding financial year. (This amount is taken to be zero if the person has no accumulated HELP debt for that financial year.)

Step 2: Add the sum of all of the HELP debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year.

Step 3: Subtract the sum of the amounts by which the person’s debts referred to in steps 1 and 2 are reduced because of any voluntary repayments that have been made during the period:
   (a) starting on 1 June in the immediately preceding financial year; and
   (b) ending immediately before the next 1 June.

Step 4: Subtract the sum of the person’s compulsory repayment amounts that:
   (a) were assessed during that period (excluding any assessed as a result of a return given before that period); or
   (b) were assessed after the end of that period as a result of a return given before the end of that period.

Step 5: Subtract the sum of the amounts by which any compulsory repayment amount of the person is increased (whether as a result of an increase in the person’s taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

Step 6: Add the sum of the amounts by which any compulsory repayment amount of the person is reduced (whether as a result of a reduction in the person’s taxable income of an income year or otherwise) by an amendment of an assessment made during that period.

Example: Lorraine is studying part-time for a Degree of Bachelor of Communications. On 1 June 2007 Lorraine had an accumulated HELP debt of $15,000. She incurred a HELP debt of $1,500 on 31 March 2007. She made a voluntary repayment of $550 (which includes a voluntary repayment bonus of $50) on 1 May 2008. Lorraine lodged her 2006-07 income tax return and a compulsory repayment amount of $3,000 was assessed and notified on her income tax notice of assessment on 3 September 2007.

To work out Lorraine’s former accumulated HELP debt before indexation on 1 June 2008:

Step 1: Take the previous accumulated HELP debt of $15,000 on 1 June 2007.

Step 2: Add the HELP debt of $1,500 incurred on 31 March 2007.

Step 3: Subtract the $550 voluntary repayment made on 1 May 2008.

Step 4: Subtract the $3,000 compulsory repayment assessed on 3 September 2007.

Steps 5 and 6: Do not apply because since 1 June 2007 Lorraine had no amendments to any assessment.

Lorraine’s former accumulated HELP debt before indexation on 1 June 2008 is:

\[ ($15,000 + $1,500) - ($550 + $3,000) = $12,950 \]
If, for example, the indexation factor for 1 June 2008 were 1.050, then the former accumulated HELP debt would be:

$$12,950 \times 1.050 = 13,597.50$$

(2) For the purposes of this section, an assessment, or an amendment of an assessment, is taken to have been made on the day specified in the notice of assessment, or notice of amended assessment, as the date of issue of that notice.

**140-10 HELP debt indexation factor**

(1) The **HELP debt indexation factor** for 1 June in a financial year is the number (rounded to 3 decimal places) worked out as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Method statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td><strong>Add:</strong></td>
</tr>
<tr>
<td>(a)</td>
<td>the *index number for the *quarter ending on 31 March in that financial year; and</td>
</tr>
<tr>
<td>(b)</td>
<td>the index numbers for the 3 quarters that immediately preceded that quarter</td>
</tr>
<tr>
<td>2.</td>
<td><strong>Add:</strong></td>
</tr>
<tr>
<td>(a)</td>
<td>the *index number for the *quarter ending on 31 March in the immediately preceding financial year; and</td>
</tr>
<tr>
<td>(b)</td>
<td>the index numbers for the 3 quarters that immediately preceded that quarter</td>
</tr>
<tr>
<td>3.</td>
<td>The HELP debt indexation factor for 1 June in the financial year is the amount under step 1 divided by the amount under step 2.</td>
</tr>
</tbody>
</table>

(2) For the purposes of rounding a *HELP debt indexation factor, the third decimal place is rounded up if, apart from the rounding:

(a) the factor would have 4 or more decimal places; and

(b) the fourth decimal place would be a number greater than 4.

**140-15 Index numbers**

(1) The *index number for a *quarter is the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the *Australian Statistician in respect of that quarter.

(2) Subject to subsection (3), if, at any time before or after the commencement of this Act:

(a) the *Australian Statistician has published or publishes an *index number in respect of a *quarter; and

(b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;

disregard the publication of the later index for the purposes of this section.

(3) If, at any time before or after the commencement of this Act, the *Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, in applying this section after the change took place or takes place, have regard only to *index numbers published in terms of the new reference base.

**140-20 Publishing HELP debt indexation factors**

The *Commissioner must cause to be published before 1 June in each financial year the *HELP debt indexation factor for that 1 June.

**Subdivision 140-C—Accumulated HELP debts**

**140-25 Working out an accumulated HELP debt**
(1) A person’s *accumulated HELP debt*, for a financial year, is worked out as follows:

\[
\text{Former accumulated HELP debt} + \text{HELP debt incurred} - \text{HELP debt repayments}
\]

where:

- **former accumulated HELP debt** is the person’s *former accumulated HELP debt* in relation to that *accumulated HELP debt*.
- **HELP debt repayments** is the sum of all of the *voluntary repayments* (if any) paid, on or after 1 July in the financial year and before 1 June in that year, in reduction of the *HELP debts incurred* in that year.
- **HELP debts incurred** is the sum of the amounts of all of the *HELP debts* (if any) that the person incurred during the first 6 months of the financial year.

Example: Paula is studying part-time for a Degree of Bachelor of Science. On 1 June 2009, her former accumulated HELP debt was worked out using Subdivision 143-B to be $20,000. She incurred a HELP debt of $1,500 on 31 August 2008. No repayments have been made in the 12 months from 1 June 2008.

Paula’s accumulated HELP debt on 1 June 2009 is worked out by taking her former accumulated HELP debt of $20,000 and adding the $1,500 HELP debt incurred on 31 August 2008. That is:

\[
$20,000 + $1,500 = $21,500
\]

(2) The person incurs the *accumulated HELP debt* on 1 June in the financial year.

(3) The first financial year for which a person can have an *accumulated HELP debt* is the financial year starting on 1 July 2005.

140-30 Rounding of amounts

(1) If, apart from this section, a person’s *accumulated HELP debt* would be an amount consisting of a number of whole dollars and a number of cents, disregard the number of cents.

(2) If, apart from this section, a person’s *accumulated HELP debt* would be an amount of less than one dollar, the person’s accumulated HELP debt is taken to be zero.

140-35 Accumulated HELP debt discharges earlier debts

(1) The *accumulated HELP debt* that a person incurs on 1 June in a financial year discharges, or discharges the unpaid part of:

(a) any *HELP debt* that the person incurred during the calendar year immediately preceding that day; and

(b) any accumulated HELP debt that the person incurred on the immediately preceding 1 June.

(2) Nothing in subsection (1) affects the application of Division 137, Subdivision 140-B or section 140-25.

140-40 Accumulated HELP debt discharged by death

(1) Upon the death of a person who has an *accumulated HELP debt*, the accumulated HELP debt is taken to be discharged.

(2) To avoid doubt, this section does not affect any *compulsory repayment amounts* required to be paid in respect of the *accumulated HELP debt*,...
whether or not those amounts were assessed before the person's death.

Note: Accumulated HELP debts are not provable in bankruptcy: see subsection 82(3AB) of the Bankruptcy Act 1966.

(16) Heading to clause 151-5, page 136 (line 7), omit “HECS-HELP”, substitute “HELP”.

(17) Clause 151-5, page 136 (lines 8 to 18), omit subclause (1), substitute:

(1) The effect that a payment under section 151-1 has on a HELP debt or an accumulated HELP debt that a person (the debtor) owes to the Commonwealth under this Chapter is the effect specified in subsection (2) or (3) of this section if the amount of the payment is:

(a) $500 or more; or
(b) sufficient to be taken under subsection (2) to pay off the total debt.

(18) Clause 151-5, page 136 (lines 24 and 25), omit “HECS-HELP debts and accumulated HECS-HELP debt”, substitute “HELP debts and accumulated HELP debt”.

(19) Clause 151-5, page 137 (lines 6 and 7), omit “HECS-HELP debts and accumulated HECS-HELP debt”, substitute “HELP debts and accumulated HELP debt”.

(20) Clause 151-10, page 137 (line 19) to page 138 (line 2), omit subclause (2), substitute:

(2) If the person has not given any directions, or the directions given do not adequately deal with the matter, any money available is to be applied as follows:

(a) first, in discharge or reduction of any HELP debt of the person;
(b) secondly, in discharge or reduction of:

(i) any HELP debt of the person; or

(ii) if there is more than one such debt, those debts in the order in which they were incurred.

(21) Clause 154-1, page 139 (lines 11 and 12), omit “accumulated HECS-HELP debt, an accumulated FEE-HELP/OS-HELP debt, or both”, substitute “accumulated HELP debt”.

(23) Clause 154-15, page 140 (line 26) to page 141 (line 2), omit paragraph (1)(a), substitute:

(a) the person’s accumulated HELP debt referred to in paragraph 154-1(1)(b) in relation to that income year; or

(24) Clause 154-15, page 141 (line 4), omit “those debts”, substitute “that debt”.

(25) Clause 154-15, page 141 (line 6), omit “those debts”, substitute “that debt”.

(26) Clause 154-15, page 141 (lines 7 and 8), omit “the sum of those debts”, substitute “that debt”.

(28) Clause 154-35, page 144 (lines 6 and 7), omit “the sum of the person’s accumulated HELP debt referred to in section 154-1(1)(b), substitute “that debt”.

(29) Clause 154-35, page 144 (line 9), omit “sum”, substitute “debt”.

(30) Schedule 1, page 197 (after line 12), after the definition of accredited course, insert:

accumulated HELP debt has the meaning given by section 140-25.

(31) Schedule 1, page 197 (lines 13 and 14), omit the definition of accumulated FEE-HELP/OS-HELP debt.

(32) Schedule 1, page 197 (lines 15 and 16), omit the definition of accumulated HECS-HELP debt.

(33) Schedule 1, page 199 (lines 12 to 14), omit “accumulated HECS-HELP debt, or an accumulated FEE-HELP/OS-HELP debt,”, substitute “accumulated HELP debt.”
(34) Schedule 1, page 201 (after line 6), after the definition of **financial viability requirements**, insert:

> *former accumulated HELP debt* has the meaning given by section 140-5.

(35) Schedule 1, page 201 (lines 7 and 8), omit the definition of **former accumulated HECS-HELP debt**.

(36) Schedule 1, page 201 (lines 9 and 10), omit the definition of **former accumulated FEE-HELP/OS-HELP debt**.

(37) Schedule 1, page 201 (lines 11 and 12), omit the definition of **former indexed FEE-HELP/OS-HELP debt**.

(38) Schedule 1, page 208 (lines 8 and 9), omit “*accumulated HECS-HELP debt, an accumulated FEE-HELP/OS-HELP debt*, substitute “*accumulated HELP debt***“.

**Sheet RE246—**

(1) Clause 154-10, page 140 (line 21), omit “30,000”, substitute “36,184”.

(2) Clause 154-20, pages 141 and 142 (table), omit the table, substitute:

<table>
<thead>
<tr>
<th>Applicable percentages</th>
<th>If the person’s repayment income is:</th>
<th>The percentage applicable is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 More than the minimum repayment income, but less than:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) for the 2005-06 * income year—$40,307; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) for a later income year—that amount indexed under section 154-25.</td>
<td></td>
<td>4%</td>
</tr>
<tr>
<td>2 More than the amount under item 1, but less than:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) for the 2005-06 * income year—$44,428; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) for a later income year—that amount indexed under section 154-25.</td>
<td></td>
<td>4.5%</td>
</tr>
<tr>
<td>3 More than the amount under item 2, but less than:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) for the 2005-06 * income year—$46,763; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) for a later income year—that amount indexed under section 154-25.</td>
<td></td>
<td>5%</td>
</tr>
</tbody>
</table>

(3) Page 176 (after line 15), at the end of Part 5-6, add:

**198-25 Review of indexation**

(1) The Minister will initiate and undertake a review of the cost adjustment factor indexation mechanism for the Commonwealth funding of universities from 2007/08.

(2) The review must be completed by February 2005 and the Government must respond to the review by April 2005 and give effect to its response when introducing the annual Higher Education Support Amendment Bill in
the 2005 May sittings of the Parliament.

(3) Without limiting the scope of the review, the reviewers must, among other things, consider the following:

(a) the alternative indices to use for wage costs—for example, the relative merits of average weekly earnings, the Commonwealth’s education wage cost index, baskets of domestic professional wage rates and purchasing power parity adjusted indices for academic labour;

(b) the alternative indices for non-wage costs, noting the high reliance of universities on advanced equipment, information technology, research infrastructure and international book and periodical stocks;

(c) the application of any agreed index or indices to the actual Commonwealth-funded staffing and financial profile of each university rather than the application of an assumed uniform profile.

(4) Page 195 (after line 21), after clause 238-5, insert:

238-7 Review of impact of Act

Before 31 December 2006, the Minister must cause a review to be commenced of the impact on the higher education sector of the higher education reforms enacted through this Act.

The government also oppose division 143, clauses 143-1 to 143-30 and clause 107-15 in the following terms:

(15) Division 143, clauses 143-1 to 143-30, page 127 (line 2) to page 134 (line 13), to be opposed.

(94) Clause 107-15, page 105 (line 23) to page 106 (line 14), to be opposed.

The TEMPORARY CHAIRMAN—The question is that division 143, clauses 143-1 to 143-30 and clause 107-15 stand as printed. Question negatived.

Senator CHERRY (Queensland) (11.38 p.m.)—I move:

(2) At the end of section 140-10, add:

(3) Where a person is in receipt of Family Tax Payment B or Carer Payment for more than six months of the year in question, the HELP indexation factor for that year shall be zero.

This amendment is an amendment to change the HECS indexation arrangement. I was inspired to move it by Senator Harradine’s speech in the second reading debate. Senator Harradine’s speech referred to the research by NATSEM, particularly by Professor Ann Harding, that HECS debts are having a real impact on people’s choices as to when to have families. He quoted Professor Ann Harding as saying that the government:

... need to be very aware of the implications for future generations of higher education fees. It’s possible that we may see major declines in fertility amongst university-educated women if they have to struggle with very high HECS debts, and that has long-term implications for age pension, healthcare and so on down the track.

This amendment seeks to address that very small issue of trying to ensure that, when people withdraw from the work force and have caring responsibilities, the govern-
ment does not impose increased HECS debts on them for that year. Given that the chamber will agree in the amendments we are about to deal with that HECS fees will be increased by up to 25 per cent, it is essential that people who drop out of the work force for valid and legitimate social concerns do not have their debts added to by the indexation factor. It is a small contribution to make towards these things. In actuarial terms, it does not cost the government very much at all because, as we know, HECS is an actuarial net balance. I commend the amendment to the chamber.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation)—I am drawn by Senator Cherry’s reluctance to enter into the usual hectoring and badgering and, consequently, would like to offer some explanation to him as to why we are not supporting his amendment. We do not support it because we believe that the bill already contains provisions that adequately address the issue. There is the key equity feature of HELP that students do not have to repay their loan until they have the financial capacity to do so. They will be required to make repayments on their loan only when their assessable income exceeds the minimal threshold, which is now going to be $35,000. Real interest rates are not charged on HELP loans. Outstanding debts are only indexed to the CPI, just to maintain the real value. There will be provisions in the HES Act to assist people who have encountered difficulties making their compulsory loan repayment. For example, the Deputy Commissioner of Taxation can defer it. If a person is entitled to a Medicare levy reduction or a Medicare levy exemption due to low family income, that person will also be exempt from making a compulsory repayment on the HELP debt for that income year. That is why we think that what we have got in the legislation is satisfactory, and we will be voting no.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that Senator Cherry’s amendment be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that the government amendments and requests be agreed to.

Question agreed to.

Bill, as amended, agreed to, subject to requests.

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

Bill—by leave—taken as a whole.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation)—by leave—I move the government amendments and requests for amendments on sheet PA235:

(1) Clause 2, page 3 (table item 12), omit the table item, substitute:

<table>
<thead>
<tr>
<th>Schedule 2, item 112</th>
<th>The later of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) 1 January 2004; and</td>
</tr>
<tr>
<td></td>
<td>(b) immediately after the commencement of sections 1-10 to 238-15 of the Higher Education Support Act 2003;</td>
</tr>
</tbody>
</table>

(12) Schedule 2, items 113 to 119A | The later of: |

<table>
<thead>
<tr>
<th>Schedule 2, item 112</th>
<th>The later of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) 1 January 2005; and</td>
</tr>
<tr>
<td></td>
<td>(b) immediately after the commencement of sections 1-10 to 238-15 of the Higher Education Support Act 2003;</td>
</tr>
</tbody>
</table>
14. Schedule 2, items 120 to 168

The later of:

(a) 1 January 2004; and
(b) immediately after the commencement of sections 1-10 to 238-15 of the Higher Education Support Act 2003.

(2) Schedule 1, item 1, page 5 (lines 17 to 19), omit paragraph (1)(e).

(3) Schedule 1, item 1, page 6 (line 1), after “applies”, insert “and the person is not an excepted student”.

(4) Schedule 1, item 1, page 6 (after line 14), at the end of the item, add:

(3) In this item:

excepted student has the meaning given by subsection 41(3) of the Higher Education Funding Act 1988.

(5) Schedule 1, item 3, page 6 (line 34), omit “is:”, substitute “is the amount specified in the following table in relation to the funding cluster in which the unit is included.”.

(6) Schedule 1, item 3, page 6 (line 35) to page 7 (line 4), omit paragraphs (2)(a) and (b).

(7) Schedule 1, page 12 (after line 27), after item 11, insert:

11A Taking account of voluntary payments made under the Higher Education Support Act 2003 before 1 June 2005

(1) If:

(a) on or after 1 January 2005 and before 1 June 2005, a person makes a voluntary repayment to the Commissioner under Division 151 of the Higher Education Support Act 2003; and

(b) the payment is in respect of one or more HELP debts that are not HECS-HELP debts;

in working out, under section 143-15 of that Act, a person’s accumulated FEE-HELP/OS-HELP debt for the financial year, add the amount to the amount of the sum referred to in step 3 of the method statement in section 143-5 of that Act.

(2) Subitem (1) does not affect whether the amount or value of a scholarship in relation to which that subitem does not apply is income for the

(9) Schedule 2, items 113 and 114, page 47 (lines 10 to 13), omit the items, substitute:

113 Subsection 106PA(2)
Repeal the subsection.

114 Subsection 106PA(3)
Omit “If the amount of the debt is $500 or more, the”, substitute “The”.

(10) Schedule 2, page 47 (after line 25), after item 119, insert:

119A Subsection 106PA(5)
Omit “(2),”.

(13) Schedule 2, item 137, page 51 (lines 1 to 4), omit the item, substitute:

137 Section 12-5 (table item headed “Higher Education Contribution Scheme (HECS)”) Repeal the item, substitute:
higher education assistance  26-20

(1) Clause 2 (table item 14, column 1), omit “168”, substitute “169”.

(2) Schedule 1, item 10, page 12 (lines 4 and 5), omit “accumulated HECS-HELP debts”, substitute “accumulated HELP debts”.

(3) Schedule 1, item 10, page 12 (line 7), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

(4) Schedule 1, item 10, page 12 (line 11), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

(5) Schedule 1, item 11, page 12 (line 25), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

(6) Schedule 1, item 12, page 13 (line 8), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

(7) Schedule 1, item 13, page 13 (line 22), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

(8) Schedule 1, item 13, page 13 (line 35), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

(9) Schedule 2, page 22 (after line 15), after Part 2, insert:

Part 2A—HEC repayment thresholds for the 2004-05 year of income

Higher Education Funding Act 1988

8A Subsection 106Q(1)
Omit “subsection (7)”, substitute “subsections (7) and (8)”.

8B Subparagraph 106Q(4)(a)(ii)
After “year of income”, insert “(other than the 2004-05 year of income)”.

8C After subparagraph 106Q(4)(a)(ii)
Insert:
; or (iii) for the 2004-05 year of income—$35,000;

8D At the end of section 106Q
Add:

(8) This section applies in relation to the 2004-05 year of income as if the table in subsection (1) were omitted and the following table were substituted:

<table>
<thead>
<tr>
<th>Item</th>
<th>Person’s HEC repayment income in respect of year of income</th>
<th>Percentage applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>More than $35,000, but less than $38,988</td>
<td>4%</td>
</tr>
<tr>
<td>2</td>
<td>$38,988 or more, but less than $42,973</td>
<td>4.5%</td>
</tr>
<tr>
<td>3</td>
<td>$42,973 or more, but less than $45,233</td>
<td>5%</td>
</tr>
<tr>
<td>4</td>
<td>$45,233 or more, but less than $48,622</td>
<td>5.5%</td>
</tr>
<tr>
<td>5</td>
<td>$48,622 or more, but less than $52,658</td>
<td>6%</td>
</tr>
<tr>
<td>6</td>
<td>$52,658 or more, but less than $55,430</td>
<td>6.5%</td>
</tr>
<tr>
<td>7</td>
<td>$55,430 or more, but less than $60,972</td>
<td>7%</td>
</tr>
<tr>
<td>8</td>
<td>$60,972 or more, but less than $65,000</td>
<td>7.5%</td>
</tr>
<tr>
<td>9</td>
<td>$65,000 or more</td>
<td>8%</td>
</tr>
</tbody>
</table>
(10) Schedule 2, item 18, page 24 (line 15), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

(11) Schedule 2, item 120, page 48 (lines 3 to 6), omit all the words from and including “accumulated HECS-HELP debt” to and including “or both”, substitute “accumulated HELP debt”.

(12) Schedule 2, item 122, page 48 (lines 9 to 18), omit the item, substitute:

122 At the end of subsection 106Y(2)

Add:

; (f) fourthly, in discharge or reduction of:

(i) any HELP debt of the person; or
(ii) if there is more than one such debt, those debts in the order in which they were incurred.

(13) Schedule 2, items 143 and 144, page 51 (line 25) to page 52 (line 4), omit the items, substitute:

143 Section 995-1

Insert:

accumulated HELP debt has the meaning given by section 140-25 of the Higher Education Support Act 2003.

(15) Schedule 2, item 157, page 54 (lines 7 and 8), omit “accumulated HECS-HELP debt or accumulated FEE-HELP/OS-HELP debts”, substitute “accumulated HELP debt”.

(16) Schedule 2, item 159, page 54 (lines 17 and 18), omit “accumulated HECS-HELP debt or accumulated FEE-HELP/OS-HELP debt”, substitute “accumulated HELP debt”.

(17) Schedule 2, item 160, page 54 (lines 22 and 23), omit “accumulated HECS-HELP debt or accumulated FEE-HELP/OS-HELP debt”, substitute “accumulated HELP debt”.

Requests:

That the House of Representatives be requested to make the following amendments:

(14) Schedule 2, page 52 (before line 6), before item 145, insert:

144A After paragraph 8(8)(zj)

Insert:

(zja) the amount or value of:

(i) a scholarship known as a Commonwealth Education Costs Scholarship; or
(ii) a scholarship known as a Commonwealth Accommodation Scholarship;

provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the Higher Education Support Act 2003;

(18) Schedule 2, page 55 (after line 24), at the end of the Schedule, add:

Veterans’ Entitlements Act 1986

169 After paragraph 5H(8)(ha)

Insert:

(hb) the amount or value of:

(i) a scholarship known as a Commonwealth Education Costs Scholarship; or
(ii) a scholarship known as a Commonwealth Accommodation Scholarship;

provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the Higher Education Support Act 2003;

The government oppose schedule 2, items 133, 134 and 135 in the following terms:

(11) Schedule 2, item 133, page 50 (lines 14 to 20), to be opposed.

(12) Schedule 2, items 134 and 135, page 50 (lines 21 to 28), to be opposed.

Senator STOTT DESPOJA (South Australia) (11.43 p.m.)—I move Australian Democrat amendment (1) on sheet 3255 to government request (14) on sheet PA240:

After paragraph (zja), insert:
the amount or value of scholarships offered by a university or higher education provider on the basis of education or financial disadvantage.

Question negatived.

Senator MURPHY (Tasmania) (11.43 p.m.)—Further to a matter raised by Senator Crossin about Batchelor Institute, arising from some discussions we have had the minister has agreed to provide an additional $3½ million for Batchelor College and $500,000 in 2004 and then a further $3 million will be provided in 2004-05 to enrich Indigenous higher education in the Northern Territory. I congratulate the minister. Regardless of what might people might think of the outcome tonight, this is a step in the right direction and I think it will assist Batchelor in ensuring that Indigenous Australians get some funding that they rightly deserve, particularly in the circumstances in which many of them find themselves. If nobody else does, I will congratulate the minister at least on taking that step.

Senator CARR (Victoria) (11.45 p.m.)—Obviously we welcome the fact that Batchelor College has been able to get $3 million, but you would have to say it is an extraordinary way to run a higher education system—the minister sitting around the corner with a chequebook asking, ‘How much does it take to get this bill through?’ What is the argument here? What is the nature of the arrangements being entered into? What are the transparent processes? It is a sham and there is no way you can defend it.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that the government amendments be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that schedule 2, items 133, 134 and 135 stand as printed.

Senator CARR (Victoria) (11.45 p.m.)—I move opposition request (1) and amendments (2) and (3):

(1) Schedule 2, item 1, page 21 (line 6), omit “$2,990,161,000”, substitute “$3,004,061,000”.

(2) Schedule 2, item 36, page 27 (lines 13 to 16), omit paragraph 10(6)(a).

(3) Schedule 2, item 72, page 36 (lines 15 to 18), omit paragraph 11(5)(a).

Statement pursuant to the order of the Senate of 26 June 2000

The effect of the amendment will be to increase the amounts available to fund grants under the proposed Act. The payment of these grants will be met from the standing appropriation contained in section 118 of the Higher Education Funding Act 1988.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure under a standing appropriation. This request is therefore in accordance with the precedents of the Senate.

I will speak briefly to the opposition amendments. We understand the nature of the deals that have been done. I have enjoyed my time on the ANU council. The chair is looking puzzled. It should be understood here that what we will be voting for in a minute is to remove MPs from the ANU council, which means me and Senator Mason. I have always joked that I thought they were not really interested in me; they were more interested in Senator Mason. We know what a danger he is to public safety and the wellbeing of higher education in this country. So it is quite clear that the government will
achieve their result, which is terrific—good on them.

I want to thank Professor Chubb for the opportunity to participate in the affairs of the ANU. I want to thank the Vice-Chancellors Committee for their undying support in the need to ensure there is proper access to the parliament and their capacity to communicate directly with the opposition as well as the government. I must say I am a bit puzzled by the process through which this has come about. I understood that the information coming from the university was not to support this, but what we hear from the Vice-Chancellors Committee is to support it. So it is quite clear there are communications breakdowns in the Vice-Chancellors Committee.

It is quite clear also that there is no breakdown in the communications between the government and the Independents. This is the political fix—the political stunt. This is part of the sleazy deal. I only found out an hour or so ago that that was all part of the arrangement. The Independent senators did not even know what they had signed up to. What I like is the penetrating analysis that we have been subject to here tonight—the deep understanding of the commitments entered into. As I said, it will mean I get Fridays off more often. I appreciate that, thank you very much, but if you think you are doing something noble here think again.

Senator STOTT DESPOJA (South Australia) (11.47 p.m.)—On behalf of the Democrats, I will be supporting the opposition amendments. Indeed, governance is one of the other aspects of this legislation that has not received anywhere near adequate attention tonight. Obviously it is the government’s intention to limit the size of university governance bodies to the magical 18 figure, removing politicians from councils and forcing all members to act solely in the interests of the university. There has been no real examination or explanation as to what constitutes a university’s interests, who should define them or, indeed, what is so magical about that number 18. How does this actually relate to improving the outcomes for students or academic and general staff?

The national governance protocols have been criticised by several staff and student organisations through the Senate inquiry process. More specifically, they identified a danger inherent in protocol 3 that members of a governing body must act solely in the interests of the university taken as a whole. The danger in that lack of definition of the university’s interests and who defines them are key areas which obviously have not been addressed. The Democrats are concerned that, in defining a university’s interests, a person or persons can provide themselves with greater power than others serving on the governing body. Senator Carr gave what sounded almost like an Oscar acceptance speech. I am glad you enjoyed your time on the ANU council, as I am sure many politicians did before you. I think Senator Tierney was—

Senator Cherry—And Senator Colston.

Senator STOTT DESPOJA—Senator Colston, of course. It reminds me of 1996 all over again. Anyway, it is interesting to see that this is being supported. I am not sure why it is being supported. I would have thought it was in the universities’ interests to determine whether or not governing boards act in a certain way, who is on them and whether or not politicians are part of them. For those senators who were part of the committee inquiry, we actually do know what the vice-chancellors’ views were and how most councils operate. I am sorry that other senators in this chamber do not know that. We will support the amendments and hope that the vice-chancellors or the gov-
The Australian Greens will be supporting these amendments. It is an opportunity to talk about the roles of a whole range of different people on university bodies. As the legislation has gone through this evening we have kicked off students and staff—and now, for the final set of amendments for the day, we are kicking off MPs. In terms of university councils being less able to hear from a whole range of different people who are involved in the student organisations and with the staff, we are now also putting to the side the community voice, represented by MPs. Comments were made in the Senate inquiry—particularly in New South Wales, where MPs sit on university councils—that sometimes the contributions to debates within university councils have meant that it was extremely useful to have people there with experience in decision making, such as parliamentarians.

I know from speaking to many students who have been on university councils in New South Wales with MPs on them that they have really appreciated the opportunity for MPs in particular to work with students to put forward particular perspectives. That happened at my old university, the University of New South Wales. When a range of different corporatisation measures have come in, there has been capacity for the students to work with the MPs on that university council to achieve improvements for the student body and the academic staff. I think we have seen in the process the value that can be provided by a whole range of different representatives, and MPs have been one of those. We will be supporting these amendments.

Question negatived.

Bill, as amended, agreed to, subject to requests.


Sitting suspended from 11.53 p.m. to 9.00 a.m. Friday, 5 December

Friday, 5 December 2003

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

TAXATION LAWS AMENDMENT (SUPERANNUATION CONTRIBUTIONS SPLITTING) BILL 2003

Report of Senate Economics Legislation Committee

Senator BRANDIS (Queensland) (9.00 a.m.)—On behalf of the Senate Economics Legislation Committee, I present the report of the committee on the provisions of Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

PRAYERS

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.01 a.m.)—Mr President, even though we suspended last night, I think there are a number of senators who would like a prayer this morning.

The PRESIDENT—It is too late.

Senator IAN CAMPBELL—It is never too late for a prayer. It is worth noting, however, that on previous occasions when the
Senate has suspended—and there was one occasion when we did the Mabo debate for five days—we did say a prayer every single morning, suspension after suspension.

BUSINESS

Rearrangement

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

That the order of consideration of business for the remainder of today be as follows:

(a) prayers;
(b) government business orders of the day—
   No. 3 Financial Services Reform Amendment Bill 2003
   No. 7 Trade Practices Legislation Amendment Bill 2003, consideration in committee of the whole of message no. 467 from the House of Representatives
   No. 4 Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003
   No. 5 Family Law Amendment Bill 2003
   No. 2 ASIO Legislation Amendment Bill 2003; and
(c) general business order of the day no. 71 (Kyoto Protocol Ratification Bill 2003 [No. 2]).

NOTICES

Presentation

Senator BROWN (Tasmania) (9.03 a.m.)—by leave—I give notice that, on the next day of sitting I shall move:

That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 16 July 2004:

All matters relating to Australia’s involvement in preparations for the deployment of the United States of America’s proposed missile defence program.

PRAYERS

The PRESIDENT (9.04 a.m.)—In light of the previous discussion, I will now read prayers.

Prayers having been read—

FINANCIAL SERVICES REFORM AMENDMENT BILL 2003

Second Reading

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

That this bill be now read a second time.

Senator CONROY (Victoria) (9.04 a.m.)—I was just wondering whether there is going to be a minister available. I understood that Senator Coonan was handling the Financial Services Reform Amendment Bill 2003 today. Is Senator Coonan handling the bill?

Senator Ian Campbell interjecting—

Senator CONROY—No? Yesterday she said that she had drawn the lucky straw and she was going to be handling it but, clearly, you have rolled her as well.

The Financial Services Reform Amendment Bill will go down as one of the most long-awaited bills in the Treasury portfolio in this parliament’s history. At five minutes to midnight the Howard government has decided to make significant changes to the financial services regime. The ASIC web site says that after 10 December there is no guarantee that participants will be licensed by 10 March 2004. With full knowledge that the March deadline was fast approaching the Howard government decided not to debate this bill in parliament until 5 November—although they introduced it in June. In addition, the government has continued to make amendments to the bill, with their last batch of amendments posted on the Treasury web site on 23 October 2003. Regulations are continuing to be made with the latest batch,
batch 6, still in draft form. The delay by the
government has created uncertainty in the
financial services industry and this uncer-
tainty has been a key reason why many par-
ticipants in the financial services industry
have refused to transition to the new FSR
regime.

In spite of the government’s delay, Labor
supports the majority of the changes made by
this amending bill. We also support the ob-
jectives of the Financial Services Reform Act
2001 and we are keen to ensure that the gov-
ernment monitors its implementation and
resists attempts by interest groups to water
down the consumer protection provisions.

Labor support the principles in the bill;
however, there are some aspects to it which
we believe can be improved with our
amendments. The issues which we have in
relation to the bill are well documented as
they were discussed in the Senate committee
reports that were tabled on 26 June, 21 Au-
gust and 3 December. Labor have five con-
cerns with this bill and the regulations. They
are: the so-called dollar disclosure regime for
fees and charges, the expansion of the defini-
tion of basic deposit product, the insertion of
a new ASIC power to grant relief in relation
to part 7.6 of the FSR Act, the stockbroker
exemption and restricted terms. Labor have
not made a secret of our concerns with this
bill. Although the government have chosen
to ignore our concerns, they will not be sur-
prised by them.

The most alarming aspect of the govern-
ment’s changes to the FSR regime relates to
the so-called dollar disclosure provisions in
batch 5 of the regulations, now known as
Statutory Rules 2003 No. 282. All senators
will know that Labor have been campaigning
for dollar disclosure of fees, charges and
commissions in disclosure documents for
years. On 16 September 2002, over a year
ago, I moved a motion to disallow certain
regulations in relation to disclosure of fees in
product disclosure statements. Since that
time the government has not sought to dis-
cuss the issue of fee disclosure with me or, I
presume, Senator Murray. Then, in August
this year, Senator Sherry and I issued a me-
dia release which set out Labor’s concerns in
relation to ASIC’s fee disclosure model.
Since then, I have raised the issue of fee dis-
closure with a number of industry groups.
Labor believe that consumers have a right to
know what fees they are paying in dollar
terms and they are entitled to know a bottom
line figure. This is a simple concept, yet the
government has failed for a second time to
mandate disclosure in dollar terms. That is
why I will be moving amendments to the
FSR bill to enshrine the requirement for dol-
lar disclosure of fees and charges in the law,
and why I gave notice yesterday that I intend
to disallow the dollar disclosure regulations
in schedule 3 of Statutory Rules No. 282.

Let nobody be under any misapple-
ration: Labor, with the Democrats, have con-
sistently opposed the government’s backslid-
ing and caving in to the investment industry,
IFSA and their friends. We have consistently
opposed this cave in. This is one of the key
reasons Labor supported the bill in the first
place. The government are trying to sneak
into the parliament with a few days to go,
saying, ‘We have to have this bill; you’ll
cause massive problems,’ and at the same
time putting the biggest hole in the bill that
we have seen. Labor have been consistent on
this and we will consistently fight this.

The new regulations give every product
issuer in the country an escape route to avoid
disclosing in dollar terms. That escape route
is called the ‘reasonably practicable’ test.
The way this test works is that the product
issuers only have to disclose in dollar terms
if it is reasonably practicable to do so. If it is not reasonably practicable to disclose in dollar terms, then they are able to disclose in percentage terms. If it is not reasonably practicable to disclose in percentage terms, they can choose to give a description of the charge. The question is: what does ‘reasonably practicable’ actually mean? Does it mean that it is not reasonably practicable to disclose the fees in dollar terms because it is inconvenient to change the stationery? Or that it is too hard to upgrade the computer systems? Nobody knows.

During the Senate estimates committee hearing on Monday the Australian Consumers Association were extremely concerned about the new dollar disclosure regime. This is really important for people to understand. I see Senator Cherry in the chamber today and I know he has an interest in this area as well. If we let this bill go through as it is we will actually be winding back the previous position that the parliament has adopted, that the Democrats have supported, that Labor have supported and that the Greens have supported. This will actually wind it back. It will wind back some of the requirements for disclosure of fees and charges. The Consumers Association had the following concerns about the reasonably practicable test:

First of all, I think it would see not only a denial of relevant information contrary to the good disclosure principles enunciated by ASIC in PS 168 that disclosure be timely, relevant and complete, promote product understanding, promote comparison, highlight important information and have regard to consumers’ needs, but in this case it would mean that consumers are unlikely to get the very information they need when it comes to comparing different funds and the cost in particular of investing with different funds and different products.

Labor believe that the reasonably practicable test is fundamentally flawed and is designed for commercial expediency, not consumer protection. We do not believe that dollar disclosure should occur only where it is reasonably practicable to do so.

The reasonably practicable test is also contrary to Professor Ramsay’s recommendations in his landmark report released in 2002 on fees and charges. In relation to Professor Ramsay’s recommendations, the Australian Consumers Association advised the Senate Economics Committee that if we allow a reasonably practicable definition of what is required it is difficult to see how in many cases that would be advanced. Yes, it would create a much more lax regime than Professor Ramsay envisaged and, I think, that consumers expect. In my view, Senator Campbell and, when he allows him off the leash to sign the paperwork, Ross Cameron need to allow the following questions. If one fund discloses in dollar terms and another fund discloses in percentage terms, how can consumers compare like with like? If one fund discloses in percentage terms and another fund disclosures a description of the charges, how can consumers compare like with like? If one fund discloses their fees gross of tax and another discloses their fees net of tax, how can consumers compare like with like? If consumers are unable to compare like with like—that is, one fund with another fund—how can they make an informed investment decision? If consumers are not provided with a single bottom line figure on the fees charged, how can consumers make an informed investment decision?

Why does Labor want fee disclosure in dollar terms and a bottom line figure? Because that is what consumers understand.

The Australian Consumers Association told the committee on Monday:

… when it comes to giving consumers information that they can actually understand, survey after survey and study after study shows that individual dollar based disclosure provided on a standardised basis is most effective.
A survey released in November by Ageing Agendas also found that:
... virtually all consumers tested were out of their depth in comparing and understanding fees.

Many in the financial services industry advocate a self-regulatory approach. They say that it is only a matter of time before fee disclosure on a dollar basis is the standard. ‘Leave it up to us,’ they say, ‘and we will disclose in dollar terms eventually’. The explanatory memorandum says that the disclosure in dollar terms is expected to become more widespread over time. If it is true that disclosure of fees in dollar terms occurs over time, why hasn’t it already occurred?

During the hearing, the ACA had this to say to the committee:
I see no evidence in the development of fee disclosure so far to suggest that that will be the case. I highlight to the committee the fact that the US Congress—one of the most conservative parliaments in the world—last week passed the US Mutual Funds Bill to require greatly enhanced disclosure requirements of industry there.

This is not a problem unique to Australia. This industry goes out of its way to obscure the facts. It goes out of its way to ensure that consumers are not able to make meaningful comparisons. They do not want consumers to understand what they are really being charged. This more than any other issue in the financial services industry is an indictment against the structure of industry. The so-called dollar disclosure regime in the FSR regulations is another attempt by the Howard government to allow the industry to self-regulate. The Howard government is yet again caving in to big business. Big business says that dollar disclosure is too hard. The banks and fund managers do not want dollar disclosure. There is no question here that today is a test of whether or not this government will stand up to banks and fund managers and say, ‘No, we’re going to do the right thing by consumers.’

Labor is standing up for consumers and saying no this government’s self-regulatory approach, which has led to nothing more than rampant corporate greed in this country and nothing more than hundreds of thousands, if not millions, of Australian consumers being worse off, being unable to truly get the information they need when it comes to this industry. In our view self-regulation is a green light to corporate greed.

Let us listen not just to Stephen Conroy, the Labor shadow minister; let us listen to Doug McTaggart, the chief of IFSA—the man who is in charge of the association representing the industry. He said this in August this year:
I am concerned that our industry will be seen to have created a supply driven monster that is out of control. A monster that has too many product features, too many different types of fees and too little effective disclosure. I marvel at how the average politician, regulator or consumer can get their head around our various products and services. Is it any wonder that we are under constant criticism? The industry needs to focus on simplifying its offerings ... if it is not possible to quantify a fee in a product disclosure statement or Financial Services Guide, we should consider banning that fee.

That is from the chairman of IFSA, Doug McTaggart. He has put his hand up and said, ‘I accept that what has gone on in this industry for the last 50 years is fundamentally wrong, and it is time for change.’ But despite Mr McTaggart’s fine words, what have the industry been doing? They have been sneaking around through the back door, crawling up to Senator Campbell and saying, ‘Don’t listen to Doug McTaggart. Don’t listen to the chairman of IFSA.’ who, I repeat, said this:
I marvel at how the average politician, regulator or consumer can get their head around our various products and services.

He further said:

I am concerned that our industry will be seen to have created a supply driven monster that is out of control.

This bill is about trying to get that supply-driven monster under some sort of control. It will not come from the industry, it will not come from self-regulation and, from this bill, it certainly will not come from this government.

Consumers deserve nothing less than dollar disclosure of fees and charges and a bottom-line figure. In our view, the current regulations are worse than no regulations at all. However, Labor and the Democrats have created an alternative disclosure model. Our amendments aim to reverse the onus of proof. We have deleted the government’s concept of ‘dollar disclosure where reasonably practicable’ and replaced it with the new concept of ‘dollar disclosure unless ASIC determines that it is not possible’. In Labor’s view, the regulations should: require dollar disclosure for statements of advice, product disclosure statements and periodic statements; delete all references to the ‘reasonably practicable’ test; require disclosure in percentages if ASIC determines that dollar disclosure is not possible; require ASIC to issue guidelines in relation to the circumstances when it is not possible to disclose in dollar terms; where examples are required, ensure they are based on a standard model; and require a single bottom line fee to allow comparability between funds. These are our minimum requirements.

Those opposite will say that disclosure of a single bottom line figure is not possible. Research released on 13 November by ASFA with Chant West blows that argument out of the water. The CEO of ASFA, Ms Philippa Smith, said:

The ‘bottom line’ figure is paramount for any consumer, employer or stakeholder wishing to make a comparison between funds.

Standardised fee disclosure with a bottom line figure is not only desirable; it is also possible. Do not believe the bleating of those with vested interests who are crawling around behind the scenes trying to get the government to nobble this piece of legislation, something which Joe Hockey, the former minister, so nobly resisted. As those of us who have been involved in this argument for many years know—Senator Murray, Senator Campbell and me—Joe Hockey stood up to the vested interests in the financial services industry and said: ‘No, it is not good enough. You do have to provide this sort of information.’ Two years down the track, we see the industry still chipping away. The only problem is this is not a chip; it is a bloody great hole.

Standardised fee disclosure with a bottom line is possible. ASFA and the Chant West research proves it. The ACA outlined to the committee the four elements of effective fee disclosure. These are: an indicative up-front measure of the cost of a fund; some form of fee disclosure table or template; the application of fees to individual assets, including the effect of fees on returns; and a periodic statement demonstrating to the investor or consumer how much has been paid since they entered into the fund. At present, only the second element, the fee disclosure template, is in existence. (Time expired)

Senator MURRAY (Western Australia) (9.24 a.m.)—The Financial Services Reform Amendment Bill 2003 clarifies and amends various aspects of the regulatory framework governing the licensing, conduct and disclosure of providers of financial services. It also covers the licensing of financial markets, and
clearing and settlement facilities. Whilst I do not want to derogate from the depth and passion of Senator Conroy’s views on this matter, I do want to reinforce a point I have consistently made, which I think he indirectly made with his references to Mr Hockey. My point is that this is one of a series of bills which I have consistently described as a very gutsy innovation in transparency for markets—in this case financial markets. Despite the strength of the speech from Senator Conroy, Labor, the government and the Democrats have been thoroughly supportive of the government’s intention. Once again, on the record, I would indicate the appreciation of the Democrats for the government’s pursuit of these issues.

The Democrats are committed to the significant reforms of the FSR regime. The regime commenced on 11 March 2002, but financial service providers have been given a two-year transition period so that the full effect of the regime commences on 11 March 2004. Behind much of Senator Conroy’s remarks, of course, is the very human sense that as people approach a deadline they get more and more anxious to either get some relief that was not in the original intent or find ways in which they can make the impact of that deadline less onerous on them. The fact is that it is going to be onerous. The government has rightly decided that it needs to be onerous, and I think credit should be given to Senator Campbell for the way in which he has driven this process during his long tenure in this area.

There has been considerable consultation over many years to seek a smooth implementation. We have recently had two Senate economics committees investigate this bill. The first one dealt with the original bill and the second with the amendments and regulations. However, like any significant reform, there are some adjustments that still need to be made at this late stage. Accordingly, the bill seeks to remedy some defects that have been identified in the original Financial Services Reform Act 2001. The Democrats have been strong and vocal supporters of this initiative. Inevitably, there are times when we might be disappointed that the government appears to be softer than we would prefer in some areas, particularly in the disclosure of fees, commissions and charges, but in other areas the government has been commendably tough. There is always a question of balance and judgment.

At the heart of the issue is the strong belief that consumers of financial products, with their enormous value, range and importance to Australians, have a right to know the fees that are being imposed. For this reason, even at this late stage in the legislative process, there are amendments before the Senate which seek to toughen the legislation and regulations, particularly as they apply to fee disclosure. Attached to the bill are the very important regulations which were considered by the Senate Economics Committee earlier this week. The issue that causes the greatest concern are the regulations requiring specific disclosure of returns, fees, charges, commissions et cetera in product disclosure statements, statements of advice and periodic statements. These regulations require disclosure to be in dollar amounts unless ‘reasonably practicable’. That is the phrase which concerns people. If dollar amounts are not reasonably practicable, percentage disclosure is permitted and, if that is not reasonably practicable, the financial service provider can simply give a description of the fee.

This evidence was provided by the Australian Consumers Association to the Senate Economics Committee:
While it may be appropriate to take into account practical considerations when looking at such things as breach notifications, which are also included in the regulations, when it comes to giving consumers information that they can actually understand, survey after survey and study after study shows that individual dollar based disclosure provided on a standardised basis is most effective.

It should be noted that the recently released ASIC fee disclosure model was criticised last month in research conducted by ASFA with Chant West. The Chant West report found:

... it is not clear that consumers will be able to understand ASIC’s fee tables or make valid comparisons of bottom-line costs.

ASIC is a very experienced and capable agency with a high reputation. The fact that that remark by Chant West could be made indicates the difficulty of the task ASIC is facing. It is an extremely difficult area to get some resolution on, and I think that only time will shake out the final form in which these disclosures are made most effective.

The Democrats strongly agree with the dollar and then percentage description hierarchy of fee disclosure that is enshrined in the regulations. We share the concern that the ‘reasonably practicable’ test in the regulations would prove to be too weak. We support the Labor Party in seeking to legislate to specify dollar disclosure unless ASIC considers that this is not possible. This would send the clearest message to financial service providers that dollar fee disclosure should become the norm. My colleague Senator Cherry, an expert in the area of superannuation, also advises me that this would represent a major step forward in dealing with some of the key issues in the disputed Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002. By supporting the Labor amendments or something similar, the government cannot only enshrine the principle of dollar based disclosure but also make superannuation choice legislation a more realistic proposition. I would be a little surprised if the government could not find ways in which to support the intent of the Labor amendments, because it seems to me that the Labor amendments are not at all in conflict with the legislation and its intention.

On 4 December 2003 a note from Ian Johnston, Executive Director, Financial Services Regulation, Australian Securities and Investments Commission, was received by the Senate Economics Committee and circulated to committee members. I will quote a couple of items in which he explains ASIC’s attitude to the dollar disclosure issue. I think it is very clear that they reinforce the legislation and reinforce the dollar disclosure priority in the legislation. He says, ‘Our starting point would be that the law requires dollar disclosure unless compelling reasons are provided as to why this could not be achieved.’ Note the language. The language is nothing to do with whether or not it is practicable; the language is ‘compelling reasons’. Later he remarks, ‘In other words, ASIC would be making it clear to industry that we would require dollar disclosure unless compelling reasons are provided as to why this could not be achieved.’

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I now move on to the basic deposit product issue. This is an area where we part company with Labor and have more sympathy with the government’s position. The bill seeks to extend the definition of basic deposit products. Basic deposit products are exempt from the requirements to provide a financial services guidance statement of advice. The current rules apply to at-call term
deposits of under two years. The bill will extend this to apply to term deposits of five years or less and to remove the requirement that the term deposit be at call. The Democrats are concerned that this will result in consumers being locked into term deposit products without adequate advice from well-trained professionals. Our view has always been that the virtue of term deposits is that they effectively operate at call and therefore need not be subject to a very stringent requirement where a product is an investment product, which is one which locks up money and imposes penalties if you remove your money.

Although I accept the representations I have had from the banking and credit union associations that the internal guidelines will continue to allow customers to redeem their funds on the basis that we all understand and which has been well established over many years, I would like to see some protection in legislation. So we have produced an amendment which has just been circulated—wrongly, I might say for the clerk’s records, in the name of Senator Bartlett when it should be Senator Murray—and has been previously exposed to both the government and the opposition.

This bill provides ASIC with a regulation making power. This has been criticised by the Scrutiny of Bills Committee. There is a Labor amendment to remove the ASIC regulation power. Although I understand that the Legislative Instruments Bill 2003 has now been passed and that that would overcome the difficulty envisaged by the Labor amendment, the difficulty is that that legislation, which would enable any ASIC regulation to be a disallowable instrument, will not apply until 1 January 2005. I suggest that the Labor amendment, if passed and accepted by the government, would need to be removed once 1 January 2005 arrives. So we will either need to have a sunset clause attached to it now or non-controversial amending legislation in 2005 to remove it, because my understanding is that at that stage, once the Legislative Instruments Bill becomes effective, it would be redundant.

I wish to deal with the issue of the stockbrokers. They are a group of people with a lot of vested interest and evidently some very high contacts right through the political and policy world. So we have to take note of what they say. The bill covers advice provided by stockbrokers. A new provision, section 946B, deals with execution related telephone advice. This is a practical concession that removes the requirement to provide a statement of advice every time a stockbroker talks to their client. It is a very practical amendment. The exemption will only apply for a statement of advice that has previously been provided to the client or when the client’s circumstances have not significantly altered.

The Labor Party is introducing an amendment to require stockbrokers to confirm with their clients once a year that their personal circumstances have not changed. We think that is a sensible amendment, providing it does not attach to any requirement for paperwork or anything. If it is simply a question of the stockbroker adding to the material they send to all their clients once a year saying, ‘If your circumstances change and you ring us, recognise that we then have to restate our relationship with you with respect to the bill’s requirements,’ then there is nothing at issue. We have to avoid any sense that there would be an exchange of paperwork and compliance cost attached to this. Some clients will be in regular contact with their stockbroker. For those that are not, this amendment does offer the opportunity to
maintain contact. I will be looking forward to the debate to hear what the respective views are on it. I will just make sure that everyone understands that we do not support any amendment which would result in large sheaves of paper going out to people unnecessarily.

In conclusion, the Democrats will once again be strongly supporting the legislation. Frankly, we do think it is a good reflection on the process that so few amendments are before us at this stage. We are conscious of the 11 March 2004 start date and the need to provide industry certainty in the transition period. We have cooperated in trying to make sure that we have as much opportunity as possible to meet that date.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.40 a.m.)—I thank both Senator Conroy and Senator Murray for their contributions to the second reading debate on the Financial Services Reform Amendment Bill 2003. I will be very brief in my response. The point I make about Senator Conroy’s contribution, which mostly focused on one amendment which we will get to in the committee stage, is that he did seek to unfairly categorise the regulatory regime that this government has established after enormous policy effort by the Treasurer, the former Minister for Financial Services and Regulation and me but, more importantly, by many very dedicated officers of the Treasury, many dedicated people in the financial services industry and many like you, Mr Acting Deputy President Watson, who have been applying a lot of energy to this area through the parliamentary process. Anyone who could say that self-regulation has been a green light to greed or who could categorise what we are doing in Australia and financial services as self-regulation is on another planet. This is not self-regulation; it is the most thorough regulatory regime for financial services on the planet.

Senator Conroy—it was until you got your hands on it.

Senator IAN CAMPBELL—The reality is that it was these hands, with the support of many other hands, that created this regime. It was not work by any Labor Party person when they were in government for 13 years and ignored this area. The process commenced in a number of ways, but I give personal credit to Lyn Ralph. She wrote the Good advice report when she was a deputy commissioner at ASIC. That work was put into practice when I came into the portfolio with the full support of the Treasurer. We developed CLERP 6 as part of the Corporate Law Economic Reform Program. The concept of the Financial Services Reform Act was further supported by the Wallis inquiry. In the history of CLERP 6, I think a lot of people mistakenly give Stan Wallis’s inquiry the credit for commencing the process. That is historically inaccurate. It was in fact catalysed by Lyn Ralph’s report. As Senator Murray very fairly and accurately said, we are here today putting in place some amendments which are effectively designed to make the transition smoother and to overcome some problems in the initial massive package of law.

The reality of this is that it is sweeping new regulation. Senator Murray understands it well. He gives credit to the government, which has stood proudly on a record of seeking to minimise red tape, minimise unnecessary regulation and reduce the burden on business. This is unashamedly a massive new regulatory burden on business. I cannot leave this building without being bailed up by financial services industry people, from directors of big public companies to small-sized and medium-sized public companies, little credit unions, banks, building societies and
everybody in between and without getting beaten up mercilessly over what we are doing in bringing in a whole new raft of regulations. I think it is very unfair to say that this is some sort of government that is dedicated to let it rip, laissez faire, free market self-regulation. It is absolute unadulterated rubbish to try to characterise it as that. The only measure Senator Conroy can attack in this is the product differentiation—that is all it is about: a little bit of product differentiation. The reality here is that both ASIC and ASFA, in relation to Senator Conroy’s amendment on fee disclosure, support what the government is doing.

I will go into more detail in the Committee of the Whole. I will simply refer to ASFA’s letter to Mike Rosser, the manager of investor protection within the Treasury, dated 4 December of this year. I am happy, if Mr Rosser is happy, to table this. I will let him contemplate that. It is a piece of correspondence to him. I will read from that letter. It is a letter that is signed by Philippa Smith—at least it looks like she was about to sign it. It says:

Apportioning the overall fee to an individual member level would require significant system changes for many funds. For example, accumulation arrangements are increasingly becoming unitised, with the MER deducted on a daily basis. The same thing applies to the fund administration fee for many members. This fee fluctuates from day to day depending on the member account balance. As these figures are captured in the unit price, it would require extensive system changes to extract the common fund fees as a proportion for an individual member. We would appreciate clarification from Treasury as to whether this is the type of situation where “not reasonably practicable” would apply.

I think Senator Murray referred to a submission from Ian Johnston.

**Senator Conroy**—That’s a ringing endorsement!

**Senator IAN CAMPBELL**—The problem we have got here is that there is actually no difference between the government and the opposition on where we are trying to get to, just on how you should move an industry—which I think was accurately characterised by Doug McTaggart’s statement that Senator Conroy quoted—where there is a massive range of products and a massive range of fees. How do you move to a situation where consumers can try to compare products in that environment? I think it is fair to say that the opposition, the government, all of the major financial services industry participants—with some exceptions, we would agree—and certainly ASIC are trying to get to the same place. It is a matter of whether you do it by effectively—as in Senator Conroy’s amendment—bringing it in today, not contemplating the consequences for, for example, the funds that Philippa Smith represents and not looking at the practical outcomes of that, or whether you listen to the regulator.

They are the people I take most notice of—people such as Ian Johnston, Peter Kell and others, who work very hard to ensure that we get good regulatory outcomes. I really do urge Senator Conroy to listen to what Ian Johnston has said in evidence he would have given to the parliamentary committee had he been asked to. I think Senator Murray may have quoted from it. Mr Johnston said:

Had ASIC given evidence before the Committee, that evidence would have been that we would require the issuer of a Periodic Statement to make disclosure in dollar terms unless the issuer was able to provide compelling reasons as to why this was not reasonably practicable.
I think he is, in a way, answering Philippa Smith’s question. He goes on:

For example, ASIC would not accept cost to the issuer alone as a compelling reason. Our starting point would be that the law requires dollar disclosure, unless compelling reasons are provided as to why this could not be achieved.

That statement by Mr Johnston really focuses on the relatively small disagreement in policy terms between the opposition and the government and ASIC. We all agree that dollar disclosure is where we want to get to, because I think most people agree that is what consumers understand. It is a matter of how and when.

I put this to Senator Conroy in very good faith: I believe that his amendment, and the scheme he wants to put in place, is something that could well be practicable and achievable within a period of time. I do not know whether that is one year or two years, but I know for certain that it is not today. It is almost certainly not by 11 March and it is certainly not 1 July, which is when our scheme comes into place. ASIC advises that it is just not practical to get even the government’s scheme in place by 11 March.

What I am saying is that there is very little disagreement between where we are trying to get to on dollar disclosure. It is a matter of whether you listen to the professional advisers or people with a vested interest in delaying the impact of regulation. There are costs associated with this. Industry will bleat, yell and scream. Senator Conroy has heard them, Senator Murray has heard them and I have heard them. You listen to them but you discount what they say because you know that they have a vested financial interest in delaying the regulatory impact. We all recognise that; we are not silly on those things. But you listen to ASIC, who are the people trying to get the regulatory outcome. ASIC are telling us that we cannot even get our scheme in place before 1 July. That is why we have delayed it from 11 March to 1 July—on ASIC’s advice. What we say to the Senate and Senator Conroy in good faith is that it may well be possible to have dollar disclosure in place in maybe another year, or maybe another two years. I do not know the answer to that question. The government would be happy to put that in the law when we know that we can get there in an achievable, practical way that gets the regulatory outcome that we are looking for.

Mr Johnston went on to say:

We would also have advised the Committee that what we would regard as ‘not reasonably practicable’ today, may not satisfy us as to what is not reasonably practicable six months, or twelve months later. In other words, ASIC would be making it clear to industry that we would require dollar disclosure to be the norm in disclosure documents, particularly in personalised periodic statements.

That reinforces my view that for industry it would clearly be practicable down the track. That is ASIC’s view of how the law, as we are proposing it, will be enforced. In good faith, can I say that the government would be very happy—and I say this on behalf of the government—to bring in the sort of regime that Senator Conroy is seeking to achieve today, but later down the track. I am not trying to fob him off or seek to delay for tactical reasons, just for practical reasons. I would say the practical way forward is to get the joint committee to take evidence from ASIC on when they think this might be achievable and when it is an appropriate time to make it a legal requirement. We will not stand in the way of that; we actually agree with the outcome. It is just a matter of how we get there.

So, with those words, which may save us some time in the committee because I have put my views on that amendment clearly, I welcome the constructive contributions. I thank the parliamentary committee for giving it consideration, but I particularly thank the
team at Treasury and my former staff—particularly Michelle Dowdell, my depart-
mental liaison officer—for the enormous effort that they have put into bringing the
FSRA to where it is now and for particularly bringing this bill and the amendments to the
Senate. It has been very hard work and it has taken longer than we would have liked, but I
welcome the warm words of Senator Murray, who said that the fact that there are only a
couple of amendments—which I think we can deal with effectively—is a credit to the
people in the advisers box, the people who support them back at the Treasury and all of
those who have engaged in consultation. It has been tortuous. It has been, however, thor-
ough and very diligent. The fact that we can deal with the bill in this way is a credit to the
very high quality people who serve Australia in the Australian Treasury.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CONROY (Victoria) (9.54 a.m.)—I want to make some comments on the
general application of the Financial Ser-
vices Reform Amendment Bill 2003. Senator
Ian Campbell, unfortunately, as he should
know me well, maligned me for only caring
about one issue in the bill. Unfortunately, I
still have 15 pages of the speech to go. I tend
to get passionately carried away sometimes
on the issues that I believe are important to

consumers.

Senator Ian Campbell—Would you like
to incorporate it?

Senator CONROY—No. But I do want
to make a serious point concerning the indus-
try and the point that Senator Ian Campbell
made, which was a fair point. You do not just
listen to them because you know they have a
vested interest. I want to give a concrete
demonstration of why Senator Ian Campbell
is dead right and why we need to support this
amendment. Three years ago, along with
possibly Senator Murray and others on the
Joint Committee on Financial Services and
Corporations, as it was then called, con-
ducted an inquiry into the costs and the dis-
closure issues around ATMs. We were pas-
sonately told by the banks that they could
not possibly support real-time disclosure for

ATMs because their systems were not able to
cope and that it would take between 18
months and two years to introduce real-time
disclosure.

It is three years down the track and all we
have got from them is stickers saying there
may be a cost and little notes they print on
the screens saying there is a cost. They are
not fair dinkum. They are not interested in
revealing to customers what they really
charge them. This is the most profitable in-
dustry in the world by so far it is embarrass-
ing. This is an industry that has made its
money and made its profits off the back of—
and again I quote Doug McTaggart, who
made a very courageous statement when he
said this—creating a supply driven monster
that is out of control. That was the Chairman
of the IFSA acknowledging what we know:
if you do not force disclosure on the finan-
cial services industry, you will not get it. It is
three years down the track. They have had all
this time to put effort into disclosing as sim-
ple a thing as the fact that it is going to cost
$1.20 to use your own bank’s ATM and
$1.50 or $2 to use an alternative financial
institution’s ATM. That was all we asked
three years ago, and we are still waiting.

I say to the chamber and to Senator Ian
Campbell: fair words, but this industry is not
fair dinkum on this issue. It does not want to
provide the information. Senator Ian Camp-
bell made the point fairly that we all want this information, we want to see this disclosure for consumers, but what we have got from this government is the biggest rat hole you have seen yet in this bill to let people get out of doing it. Do not accept the argument that this industry will deliver meaningful information to consumers. It has consistently used ways and means of avoiding full and proper disclosure to consumers.

This government caved in to the industry a year or so ago when the Democrats and Labor disallowed a regulation on the OMC. That was what the government was prepared to do, but we stood up and said no. Because we said no then, we got a better outcome for consumers. We have had a whole year of research, self-analysis and admission by the industry, capped off by Doug McTaggart's comments that we are not doing a good enough job. What do we see today? A way to let them keep getting away with what they have been getting away with. It is not good enough for consumers. It defeats the purpose of what Senator Murray has correctly described as a courageous bill. It defeats the purpose of Labor and Senator Murray and the Democrats signing up to this bill in the first place.

As I said, I did not want to get carried away with passion again on this one issue. There are some other comments that I want to make on other aspects of the bill and generally on the amendments. As I said, we want to see Labor's amendments in the regulations. We will implement the first element—that is a single, bottom line figure—and we will also implement the fourth element, the periodic statement disclosures in dollar figures the investor has paid. However, our amendments do not address the third element of effective disclosure: the effect of fees on future returns.

In his 2002 report, Professor Ramsay said that a one per cent increase in funds' annual fees and charges can reduce an investor's final account balance in a fund by 18 per cent after 20 years. A one per cent increase can produce an 18 per cent reduction. That is the secret of compound interest. That is the secret of the way this industry makes its money. It understands far better than consumers the importance of compound interest and it understands compounding fees. In August this year, Professor Ramsay said:

I think more needs to be done to show the effect fees have on returns, provided there is appropriate and clear disclosure of assumptions. And you would have to have some industry set assumptions.

Labor believe that the effect of fees on returns is a critical element of fee disclosure that should be addressed in the regulations. We offer to work with Senator Ian Campbell, Parliamentary Secretary Cameron and Senator Coonan to implement that recommendation from Professor Ramsay. But do not be under any illusions: this will be like a wooden stake to a vampire for this industry, because this industry does not want people to know that a one per cent increase in its fees will reduce a consumer's final end benefit by 18 per cent. This is the lifeblood on which this industry feeds. It will not want this. It will be a courageous government that is prepared to get on board for this. In terms of timing, I want to work and Labor want to work constructively with the government on our alternative disclosure model to ensure that we can produce new regulations expeditiously. The regulations that we have disallowed are listed as commencing in July 2004. I am confident that, if the government is fair dinkum and if it has goodwill, we can produce new disclosure regulations early next year to allow time for compliance prior to the proposed July start date.
Senator Ian Campbell referred to some other issues in relation to basic deposit products. I would like to move on to Labor’s other concerns with the FSR bill. The first, well known to Senator Murray, the Democrats and the government, is about the definition of a basic deposit product. Labor’s concerns about the government’s proposal to expand the definition of basic deposit product to include deposits with a term of five years are well documented. We believe that a term deposit of more than two years is a significant investment for a consumer. Accordingly, consumers should be afforded the protections offered by the FSR regime in relation to term deposits of more than two years. Training is an issue that is raised as one of the ADIs’ concerns, and that is really what this debate is about. ASIC has advised us that front-line staff at banks who do not provide advice on term deposit products and only provide administrative or cashier services do not need to meet the training requirements of policy statement 146. Internal training requirements are needed to ensure that front-line staff are competent, but that is it. For these reasons, Labor oppose the government’s amendment to expand the definition of basic deposit product.

This is probably the area where I have the greatest disappointment with the Democrats’ position and with Senator Murray’s position. I expect this government to bow and scrape and cave in to the banks. I expect it to give in to a bit of pressure from the banks. There is no question that the Australian Bankers Association is the most powerful lobby group in this country. The fact that the banks have sucked in the credit unions and the building societies to do their bidding on this bill is an indictment of the building societies and of the credit unions in particular. This bill is about protecting consumers; these institutions are about maximising their profits. In this particular debate this government is always going to back the banks. We know that. We know that, from the moment a debate on this bill opens up, this government will cave in to the banks in this country; it will give them what they want.

There is no question that a five-year term deposit is an investment. The fact is that this government wants to give banks an out to allow them to flog products across the counter, because that is what is going on: banks want to turn their tellers not into people who serve their customers but into product floggers across the counter. If you have a bit of money in your account, banks want their tellers to lock you in. They want to give you a low return so that they can take your money and make a big return on it. At the end of the day, that is what this is all about. It is about locking consumers, without giving them relevant information, into a five-year time frame so that banks can take that money and then go and lend it to other people for a lot more than they are giving consumers. It will only take one rollover to turn this into a nightmare: 10 years locked in at a low rate of return from a bank.

Consumers should be given information to explain to them that, over five and 10 years, they can do better in other products. Labor is not even trying to stop the banks from selling consumers other products. Labor is trying to stop banks from selling consumers products that are not in consumers’ interests but in the interests of the banks. The way the rewards system is structured in banks now is that tellers are given points on the basis of the products they flog to their customers. They are not given a commission—so they are not quite as structurally corrupt as the financial planners, as Louise Sylvan said—but banks say, ‘Here’s the menu of products we want you to flog across the counter to customers.’
It does not matter if they want them or not. It is like McDonald’s: you go to McDonald’s and order a hamburger, and they try to sell you some fries, a hot apple pie or an ice cream. That is what the banks are trying to turn their teller force into.

There is nothing wrong with that per se, providing they are adequately trained. But the way this structure works is that the product that maximises the profit for the bank, funnily enough, has the highest point score. The product that has the lowest return for the banks has the lowest point score. So there is a structurally corrupt industry in the making. We have already had a number of examples where people have begun churning. That is the concept where you try to turn over product because it builds up your point score. You try to get people to change from one product to another product. It is not in their interests; it is in the interests of the bank and the financial planners to churn.

This is what this government wants to allow the banks to do. That is why I am so passionately disappointed in the Democrats’ position on this. I understand the argument that it is important to get this bill through. But what this is about is selling out consumers in this way to the most powerful lobby group in the country—one that pulls the chain of this government, the parliamentary secretary and the former parliamentary secretary—and doing anything to get a good pat on the back from the banks. I am passionately disappointed in the position where they try to turn over product because it builds up your point score. That is all that is really at stake here.

I urge Senator Murray to support Labor’s amendment. It is a fair dinkum amendment about protecting consumers from banks. To cave in to it because they have said they will withdraw a five-year product from the market is a nonsense. They have no intention of doing that. They will sell any product that can make them— *(Extension of time granted)* I will move on. I will not continue on my soapbox any longer. I do not want to embarrass Senator Murray any longer.

**Senator Murray**—I’m mortified!

**Senator CONROYS**—So you should be! This bill expands ASIC’s powers to make exemptions and modifications by inserting a new provision giving ASIC the power to grant relief in relation to the licensing provisions in part 7.6. ASIC will be able to exercise this power without the need for a disallowable instrument—that is, without the sanction of parliament. Whilst either the government or ASIC may require a power to modify the application of part 7.6, it is not clear why both ASIC and the government require similar powers to modify the operation of part 7.6. The Senate Standing Committee for the Scrutiny of Bills is also concerned about the lack of parliamentary scrutiny in relation to powers under section 926A.

Labor is also concerned about the pressure that can be applied to ASIC by interest groups lobbying for exemptions from the provisions of the FSR Act. One of the key groups currently seeking exemptions is the mortgage brokers. In our view, exemptions for groups like the mortgage brokers should be subject to parliamentary scrutiny. In that way, the Labor Party and the Democrats can uphold one of the original principles of the FSR Act, consumer protection. Without parliamentary oversight by Labor and the Democrats, I fear that, if it has not already been achieved, the FSR regime will have as many holes as a Swiss cheese. The list of groups who want an out from the FSR regime, or at least a partial exemption, is endless. There are the accountants, the stockbrokers, the mortgage brokers, the insurance agents sell-
ing risk products and other products, and the banks. In this month’s *Australian CPA* magazine, Ross Cameron admits as much. He said that, as the Parliamentary Secretary for Family and Community Services, everyone asked him for more money; now that he is the Parliamentary Secretary to the Treasurer, everyone asks him, ‘Can you excuse me from some regulation?’ What can I say? I thought I heard that from Senator Campbell earlier today.

This is the very reason why Labor will not support this new ASIC power. To preserve the integrity of the FSR regime, I believe that the exercise of the exemption and modification powers relating to licensing should be subject to parliamentary scrutiny. In his speech in the other place, the Parliamentary Secretary to the Treasurer said that the Legislative Instruments Bill 2003 will make ASIC instruments of this kind disallowable. We have been advised that it is not clear exactly which legislative instruments will be disallowable. Accordingly, it is unlikely that Senator Campbell or Ross Cameron can guarantee that ASIC determinations made under this new power will be disallowable. Another issue is that the Legislative Instruments Bill does not commence before 1 January 2005.

In light of these issues, Labor believes that it is appropriate to remove ASIC’s exemption and modification power in section 926A. Anything that could be achieved through this power can also be achieved through the government’s regulation making power. But the making of regulations will be subject to parliamentary scrutiny. We have today the stockbroker exemption in section 946B. It is one of the government’s latest amendments. Our concerns with this provision are well documented. The key amendments to section 946B will mean that, although the client will be given a statement of advice initially, the provider will be exempt from the requirement to provide an SOA for further market related advice.

The Labor Party supports the general approach taken by the amendments and recognises the practical difficulties that are faced by advisers in a live market situation. However, I am concerned about whether an appropriate balance has been struck between commercial expediency and consumer protection. The government amendment assumes that the broker will be making regular inquiries about the client’s personal circumstances and so will be in a position to know if these circumstances change. Section 945A of the act provides a general obligation for providers to have a reasonable basis for any personal advice given, which, according to the explanatory memorandum, requires them to determine the client’s relevant personal circumstances. I do not believe that this general requirement is sufficient in this context. It is unclear how in a practical sense an adviser such as a stockbroker would be aware whether their clients’ circumstances have in fact changed. Accordingly, in our view, the new provision should include a requirement for the broker to go back to the client at least annually to check whether their circumstances have changed. Stockbrokers have advised us that they do not believe that this obligation will create an onerous obligation on them. Labor proposes to amend this provision accordingly.

Batch 6 of the regulations sets out circumstances where the term ‘independent’ may apply. Labor has a number of concerns with these draft regulations but, due to time constraints, I do not want to discuss them now as they are outlined in our minority report to the Senate Economics Legislation Committee inquiry. We will revisit batch 6. We will not
allow the farce that took place at the last committee hearing to happen again. We will have a meaningful discussion with witnesses who are meaningfully prepared, not given the bum’s rush by this government, which would see regulations not being given the proper scrutiny they are entitled to. I do not want to hold up the Senate any further. I am looking forward to finalising this bill because, as Senator Murray has said, it is a courageous bill. The only question is whether Parliamentary Secretary Cameron and now Minister Ian Campbell have the courage to see it through.

The TEMPORARY CHAIRMAN (Senator Cherry)—Is anybody going to move the amendment? Senator Conroy, I cannot recognise you.

Senator MURRAY (Western Australia) (10.16 a.m.)—Perhaps I should assist. I assume that Senator Conroy forgot to move opposition amendment (1) on sheet 3242 revised. Is that correct, Senator Conroy? Did you forget to move that amendment?

Senator CONROY (Victoria) (10.16 a.m.)—The opposition opposes item 6, schedule 2 in the following terms:

(1) Schedule 2, item 6, page 19 (lines 5 to 7),
TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that item 6 in schedule 2 stand as printed.

Question agreed to.

Senator MURRAY (Western Australia) (10.18 a.m.)—I move Democrat amendment (1) on sheet 3257:

(1) Schedule 2, item 7, page 19 (lines 8 to 10),
omit the item, substitute:

7 Section 761A (paragraph (d) of the definition of basic deposit product)

Before “funds”, insert “unless subparagraph (c)(ii) applies and the period referred to in that subparagraph expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility—".

This amendment has been previously exposed to both the Labor Party and the government. It does preserve the existing at call requirements for products over two years. It does preserve a principle to which Labor is opposed but to which the Democrats and the coalition have previously agreed. The existing at call process does not allow exit fees but does permit some interest penalty, and products of five years or less will be basic deposit products, as are products of two years or less at present, per the government amendment to the bill, as adjusted by this amendment.

Question agreed to.

Senator CONROY (Victoria) (10.19 a.m.)—The opposition opposes item 42 in schedule 2 in the following terms:

(2) Schedule 2, item 42, page 25 (line 17) to page 26 (line 27), section 926A, TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that item 42 in schedule 2 stand as printed.

Senator MURRAY (Western Australia) (10.20 a.m.)—The Senate Scrutiny of Bills Committee reviewed this particular matter and wrote to the parliamentary secretary and got a response. I should declare that I am a member of that committee, in case anyone smells a conflict of interest. The committee said the following:

The Committee notes that the bill provides the power for exemptions and modifications to be made by both ASIC and regulations ... The Committee further notes that it is proposed ASIC will exercise this power only when prompt action is required but that the use of such power will be subject to review by the Administrative Review Tribunal, the Federal Court and the Commonwealth Ombudsman.
The Committee acknowledges that decisions made by ASIC will be subject to review. Notwithstanding this, the Committee is concerned that although such exemptions and modifications will be made only when prompt action is required, they will not be subject to the same level of Parliamentary scrutiny as those made by regulations. Ultimately, the issue of whether exemptions and modifications approved by ASIC should be subject to Parliamentary scrutiny is best left for resolution by the Senate.

For this reason, the Committee continues to draw Senators’ attention to this provision, as it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee’s terms of reference.

The point I made in my second reading contribution was that my advice was that the Legislative Instruments Bill, when it comes into force on 1 January 2005, will fix this problem. In the meantime we have the problem and, for that reason, I think Labor’s amendment is appropriate and meets the views of the Scrutiny of Bills Committee.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.21 a.m.)—This is one of these issues where we do not have a disagreement on the fundamental policy; in fact, the government has enacted the Legislative Instruments Bill 2003, and that will come into force on 1 January 2005. The government is prepared—and I am happy to commit to this—to amend the law at the beginning of next year to bring the effect of the Legislative Instruments Bill forward in relation to the Financial Services Reform Amendment Bill 2003. I am advised by my legal advisers that it is preferable to do it that way rather than by way of amendment. I would obviously have to get the Treasurer to tick off on it, but I will get an undertaking subject to any other legal advice—I do not want to put my testicles on the bloody block—

The TEMPORARY CHAIRMAN (Senator Cherry)—I do not think that is entirely parliamentary, Senator Campbell.

Senator IAN CAMPBELL.—That is a medical term.

Senator Murray—He said tentacles, I think.

Senator IAN CAMPBELL—Tentacles! I am putting out feelers. Senator Murray understood.

The TEMPORARY CHAIRMAN—I think it is getting worse.

Senator IAN CAMPBELL—Anyway, I will give an undertaking to try to get this bill out of this chamber in a form that the House of Representatives will accept. I am happy to undertake to bring the effect of the Legislative Instruments Bill forward so that it does not apply from 1 January 2005 in relation to financial services and corporations legislation—ASIC, in particular—but does so from as soon as we can legislate.

Senator CONROY (Victoria) (10.23 a.m.)—I thank Senator Ian Campbell for what is a very fair and reasonable offer. Labor’s concerns revolved around the fact that the effective start date was over 12 months away. I seek clarification on a legal issue more than anything else. It would be, at best, mid-February before we would be able to table anything and possibly even March or April before it could get passed, even with the best will in the world. My concern is ASIC—
Senator Ian Campbell—When do you think CLERP 9 will be done?

Senator CONROY—About mid-March, I hope. My issue is with the start date of the commitment you have just given. Even if we did it by mid-March, which would be a good outcome for everybody, that still would leave the next three months. That is when the major arguments about exemptions and the possible regulation-making powers of ASIC would be taking place. I am really seeking to have the effective start date of that piece of legislation be today, which would have the same impact as if we passed this amendment. If it is possible for the start date to be today, anything that ASIC does between now and mid-March, April or whenever we would pass that amendment would be captured. In other words, they would have to be brought to the Senate. If that commitment is available, I think that would speed things up and Labor would be happy to accept Minister Campbell’s offer.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.25 a.m.)—To the extent that I can develop policy on the run without any reference to cabinet, which is a very dangerous thing to do—and I think Senator Conroy would respect that—we could look at a measure that we could circulate during the recess, if possible, and have it enacted as early as possible in that sitting. If it were a non-controversial measure, there is no reason that it could not be progressed in the first sitting period. I am not sure that making it retrospective is achievable, but the very least I can do is agree to take that on board.

It is worth noting that I have passing knowledge of one specific instance of where an exemption—was agitating, but I think that will be the subject of a regulation which would be disallowable anyway. I do not think there is a danger in this intervening period between now and February. The best we can do is get something into the parliament in that first sitting week. I am happy to ask Mr Cameron and the Treasurer to consult on this and to have a draft measure distributed over the next few weeks—we still have a few weeks before Christmas and before we all go totally silly. I am happy to give that undertaking, and I am on the record as doing it. The discipline for the government is that, if we have not done it and we bring the very precious CLERP 9 package into the chamber, we are going to end up with an amendment anyway. You will have to accept it in good faith, and I think I have a relatively good record of delivering on these things.

Senator CONROY (Victoria) (10.27 a.m.)—Thank you. I appreciate your attempt to effect that. My only concern about the government’s and your commitment is that ASIC is actually a statutory independent authority. I am not sure that you can give a commitment that ASIC will not issue something between now and the date you are talking about. Although you have suggested that there should not be anything issued by ASIC before February, and I hope there will be none, my concern is that it is a statutory independent authority and that you cannot give a commitment for them. I wonder whether you have any thoughts on how we can speed this up.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.28 a.m.)—All I can say is that in my dealings with ASIC on all of these areas, which were almost interminable—and I forgot to mention ASIC in the process of how we got here—we basically created, when I got back into the portfolio for my second stint, an informal group-
ing of Michelle from my office and relevant personnel from ASIC. Whenever we had a problem, we convened meetings with ASIC, my staff, the Treasury people—who are still at it over here—and the relevant group. ASIC’s general demeanour in all of this has been very much to stop the exemptions—they want to keep the thing intact. They know very well, as I know, and I think we all agree, that the minute you open the gate for someone and breach the fundamental intent of the law—we could have a political debate about whether what we are seeking to do for stockbrokers is a breach; I would argue it is not, but let us put that aside for a particular group (and there are a number of them, as Senator Conroy and all of us know) such as insurance agents or accountants who are desperately trying to get exempted then the water floods in. How do you tell agricultural advisers or stock agents that they have to get licensed but that these people over here do not?

So the government’s demeanour, and ASIC’s in particular—which is what we are worried about here, and it is a genuine concern—is generally not to do exemptions. They are very strong on that. Can we retrospectively ask ASIC to bring one of their exemptions or something before the parliament? I do not know the answer to that question, honestly. But I think we would have to ask ASIC to be cognisant of this debate that has occurred here this morning and the government’s policy intention. The practical way forward is probably for the Treasurer or the parliamentary secretary to make a statement of the government’s intent in terms of bringing forward the effect of the Legislative Instruments Bill. That is the best I can do standing here without advice, without having the two relevant ministers from the other place in the chamber. The best thing that could be done to deliver that would be for the parliamentary secretary or the Treasurer to make a statement about the government’s policy intent in relation to the Legislative Instruments Bill. What I think I could do for Senator Conroy is to seek that sort of announcement as early as possible so that ASIC get a pretty clear steer on what the government, clearly with the parliament’s support, would do in relation to this.

Senator CONROY (Victoria) (10.31 a.m.)—If we are able to get that indication as early as possible—

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.31 a.m.)—We have just had some late-breaking news, if you want it. I am told that we actually have an amendment which will just about achieve this. So that statement I have referred to could actually announce that the government intends to amend the law in this way as soon as we get back. That would achieve what you are looking for. It will send a very clear steer to ASIC, and I do not think we can really do any more today.

Senator CONROY (Victoria) (10.32 a.m.)—I just want to indicate to the chamber that the negotiations taking place have made very good progress and I think we are close to an agreement which will keep everybody happy and that we will be able to fold the bill and move on—before Senator Faulkner comes over here and garrottes me! If the advisers have reached an agreement then I think we will be able to progress it very quickly. I just want to let Senator Murray and Senator Campbell know that. It possibly might be quicker if we move on and then, I am sure, we can come back and do everything in five minutes. We have an amendment to the bill, which I think we can agree on.

Progress reported.
HIGHER EDUCATION SUPPORT BILL 2003
HIGHER EDUCATION SUPPORT (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003
Consideration of House of Representatives Message
Messages received from the House of Representatives acquainting the Senate that it had agreed to the amendments requested by the Senate to the bills.

Third Reading
Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.34 a.m.)—I move:
That these bills be now read a third time.
Debate (on motion by Senator Ian Campbell) adjourned.
Ordered that the resumption of the debate be made an order of the day for a later hour.

BUSINESS
Rearrangement
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.36 a.m.)—I move:
That intervening business be postponed till after consideration of government business order of the day no. 4 (Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2002).
Question agreed to.

WORKPLACE RELATIONS AMENDMENT (IMPROVED PROTECTION FOR VICTORIAN WORKERS) BILL 2003
Second Reading
Debate resumed from 1 December, on motion by Senator Patterson:
That this bill be now read a second time.

Senator MURRAY (Western Australia) (10.36 a.m.)—When the federal coalition government and the Australian Democrats agreed to pass the Workplace Relations Act in October 1996 and agreed with the Victorian government to pass the Commonwealth Powers Industrial Relations Act 1996 and for it to take effect in 1997, three systems of industrial relations resulted. Firstly, the Victorian government retained power for industrial relations purposes over certain state employees, principally the Victoria Police—and there were several thousands of those; secondly, the great majority of Victorians moved under the federal system to their benefit; and, thirdly, schedule 1A of the Workplace Relations Act retained minimum employment conditions based on former Victorian conditions that were inferior to those enjoyed by workers under the federal system. However, it was never intended that schedule 1A workers, some hundreds of thousands—the estimates vary between 300,000 and 500,000, so we will pick 400,000—should remain trapped there or that the number of workers in that category should grow. We have to put that into perspective. The number of Victorian workers overall is some 2.2 million—in essence it is about 20 per cent of Victorian workers.

In my remarks on the report of the Employment, Workplace Relations and Education Legislation Committee on the Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003 I stated:
We have to concern ourselves with the living standards and the ability of families who are at the bottom end of the wage sector to look after themselves and, over time, to be able to aspire to a better standard of life—and core to that is that their employment conditions, their work and family conditions, their basic wages and award conditions are as good as Australia can afford.
I also said that the Democrats would work with Labor to seek to advance the cause of moving schedule 1A workers out of schedule 1A and into the full benefit of the federal act. And I have been lobbying the government on this issue ever since. You cannot have a unitary system if one portion of the community is disadvantaged or on an inferior system. So anyone believing, as the coalition and the Democrats do, in the obvious virtues of uniform or unitary workplace relations conditions cannot justify the continuing retention of schedule 1A, which defies that very belief. Yet it was the federal coalition government which refused to carry through the logic and morality implicit in originally unifying the Victorian and federal systems. That attitude was unacceptable. I note that it appears the only reason we are here today is that the Bracks government now has the ability to pass legislation through both houses, and only with the threat of reintroducing a state industrial relations system, which would be a dreadfully retrogressive step, has the federal government finally conceded on this point. Victorian minister Rob Hulls was dead right when he said:

"The fairest, easiest and least complex approach is for the Commonwealth to accept Victoria's referral of the common rule power... this would confirm Canberra wanted a true, uniform industrial relations system in Victoria."

I could not agree more. The fact that it has taken seven years to create a genuine unitary industrial system in Victoria appals me, and I think the federal government should be ashamed of the delay that they have occasioned.

The federal government's agreement to allow Victorian workers under common rule awards to be covered by the full federal award safety net overturns the mistake of the Kennett government 10 years ago which abolished all Victorian awards. I understand that the transitional period when common rule comes into force is 12 months. While my party would have preferred the transition to occur a lot sooner, I respect that this has been a decision between the Victorian Labor government and the federal coalition government, and I understand that applications can be made in preparation for the commencement date.

One of the issues that has been raised surrounding this very commendable bill is with respect to outworkers. I, as have other senators in the chamber, have had long experience of the outworker problem and of the various unions and employers who have advanced their cause through advocacy. I include employers in that because there have been a number of employers who have done good work with the unions in trying to improve the lot of outworkers. In fact, it was the Democrats who first got outworkers recognised under the Workplace Relations Act and included in formal federal industrial relations legislation. However, it still remains a sector where there are real concerns about the way in which particularly non-English speaking workers are abused and used by unscrupulous minority— and I hope it is a minority— of employers. I am aware of employers who are doing the right thing.

The Democrats would have supported the deeming of outworkers as employees so they can share all the benefits that other employees have access to. This goes to the heart of an amendment the Democrats moved to the Workplace Relations (Termination of Employment) Bill 2002 to expand the definition of 'employee' based on noted academic Professor Andrew Stewart's recommended definitional work to cover contractors and other workers who under the Workplace Relations Act may not be considered employees but
who under other legislation, both state and federal, are.

One would assume that the government would support such an amendment as the federal system has always supported access to genuine employees. To further make my point, you cannot at one level deem someone to be an employee for tax purposes and then exclude them for workplace relations purposes. So we are disappointed that the federal government would not agree to a deeming provision when negotiating with the Victorian government on this bill. However, I understand that the Victorian government were successful in passing the Victorian Outworkers (Improved Protection) Act, which took effect on 1 November this year and will provide Victorian contract outworkers with the same basic rights as other employees. That is a positive step for Victorian outworkers. It is very important to recognise that the bill before us accepts and recognises the provisions of the Victorian Outworkers (Improved Protection) Act.

I have been assured, and I understand the government will be reinforcing this in their speech, that the bill enables the federal and state jurisdiction to operate concurrently in this matter and that the Victorian Outworkers (Improved Protection) Act will not be overridden. We will, however, monitor the implementation of the bill carefully and continue to advocate for contract outworkers to be deemed employees.

Given the improvements the bill will make for Victorian workers currently under schedule 1A of the Workplace Relations Act, we are particularly pleased that we can support this version of the bill, which was originally presented some time back. It has been a long time coming. The referral of the Victorian system to the Commonwealth from 1997 has been a remarkable success with remarkably little aggravation within the community and has shown the real benefits of national legislation being applied where formerly there was dual legislation. That is despite the fact that, under schedule 1A, thousands of Victorian employees have remained under inferior employment conditions until now.

According to Senator Alston back on 5 February 1998, when I asked him a question on notice regarding the benefits that have accrued to Victoria as a result of unifying its industrial relations system, the referral resulted in direct costs savings in excess of $8.7 million per annum to the Victorian government, who were saved providing the functions that were the subject of the referral. Senator Alston also outlined other benefits, including: the speed of establishing rights and obligations by having one point of reference for administrative services, such as enquiries and advice on wages and conditions; the accuracy of establishing rights and obligations by eliminating uncertainty or confusion created by dual systems of award regulation or agreement making; simplicity in investigation, compliance and enforcement measures; expedition in agreement making and dispute resolution by having one point of reference for access to services of the Industrial Relations Commission, including in dismissal matters and disputes, and one jurisdiction for agreement making; less technicality in dispute resolution and agreement making by eliminating preliminary jurisdictional points of law based on cross-jurisdictional issues; less cost in dispute resolution by eliminating costly litigation relating to jurisdictional overlap; and less potential for disputes over wages and conditions by a single jurisdictional regulation within individual businesses and the elimination of dual coverage of single workplaces.

I am sure—and I have said it before—that every night members of the Labor government in Victoria and countless others in the
Victorian community kneel and thank the various gods that industrial relations in Victoria is under one system and not two systems. Of course, that applies equally in the Australian Capital Territory and the Northern Territory. New South Wales, Queensland, South Australia, Tasmania and Western Australia, in my opinion, are still in the Dark Ages of industrial relations, because a state system overlaps, conflicts and confuses the situation because it operates in duality with the Commonwealth system.

I have persistently and consistently argued that we need one industrial relations system—not the six we presently have. We have a small population of just 20 million people; we have nine governments and 15 houses of parliament; and we have a ridiculous and costly overlap of laws and regulations. There are areas of the economy that genuinely require a single national approach, like finance, corporations law, trade practices law and tax law. Labour law is one of those areas, too. There are areas of policy and jurisdiction the states no longer have sensible involvement in. It took 30-plus years for tax law to become far more national than had been conceived at the commencement of Federation. After 70-plus years we finally got a unitary system of trade practices law. After 100 years, states’ rights and vested interests finally gave way to one unitary financial system for Australia. And, although the process was messy in the execution, after 100 years, we finally have a unitary system in corporations law.

It is time we moved towards a national system of industrial regulation that will do away with unnecessary replications, conflicts and complexity. There are just too many conflicting workplace laws and too many courts, tribunals and agencies regulating industrial relations. There are too many vested interests, fee takers and rent seekers. Apart from the attractions of efficiency and simplicity, a unitary system would mean that all Australians—employers and employees alike—would have the same industrial relations rights and obligations, regardless of where they live. Referenda aimed at extending the Commonwealth’s industrial relations powers failed in 1911, 1913, 1926, 1944 and 1946. It seems unlikely that anyone will attempt a unitary system by referendum again, or at least in the near future. Does that mean it is a policy we should not pursue? No, because the example of the Victorian system and the Victorian outcome—and again, let us congratulate Mr Hulls, who seems to be a very capable person—demonstrates that it can be done. And, I might add, we are not the only ones who support a unitary system of industrial relations: numerous employer groups and unions do and have openly stated their support for a unitary industrial relations system.

All that is standing in our way are vested interests, and those are pretty massive. All I can keep saying is: look at the cost and efficiency savings to the states of not having to run a separate industrial relations structure. Look at the efficiencies, the certainty and the reduction in complexity for employers and employees. I commend the Victorian Labor government for pushing the coalition government to an agreement and for sticking with a unitary system, and I urge other states to follow that lead.

Senator MARSHALL (Victoria) (10.49 a.m.)—The Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003 has come to this place seven years after it was required. The only reason it has finally come here—and the government have come here kicking and screaming—is that the Victorian government
now has a majority in both houses of the Victorian parliament and has threatened, effectively, to reintroduce a state system in Victoria. Rather than allow that to happen—and I guess forgo this government’s dream of introducing a unitary system—they have made some significant concessions, and we welcome the bill in that respect.

Victorian workers for a long period of time have been significantly disadvantaged. The government’s proposed unitary system was no such thing. In Victoria, those workers who were not covered by federal awards were covered by schedule 1A. Schedule 1A has only five basic conditions for Victorian workers, and, as we understand it, up to 600,000 Victorian workers were left high and dry by this government when the Kennett government referred its industrial relations powers to the federal jurisdiction. It has been of significant concern to us that time after time the Bracks Labor government asked this government, without success, to introduce legislation to offer the same protection to those schedule 1A employees in Victoria that is enjoyed by all other Victorian workers and, indeed, by workers in jurisdictions in other states and in the federal system. The five matters that up to 600,000 employees have regulating their terms of employment are limited to: the minimum rate of pay; annual leave, which does not include annual leave loading; five days sick leave; unpaid parental leave; notice of termination; and type of employment, whether it be full time, part time or casual.

What are missing are the other 20 allowable matters which all other employees enjoy: classification; provision for the hours of work, including the number of, and when, hours can be worked; long service leave provisions; personal leave; bereavement leave; cultural leave; parental leave; public holidays; all sorts of other allowances that go to the basis of skills and experience; loadings for working overtime or for casual and shift work; penalty rates; redundancy pay; standing down provisions; dispute settlement provisions; jury service; superannuation; and pay and conditions for outworkers.

The Victorian government set up an independent task force which conducted a review of Victoria’s industrial relations framework in 2000. It concluded that schedule 1A employees were disadvantaged compared to other employees. This information has been available to this government for a long time. The task force found that, compared to other states, Victoria has a disproportionately large low-wage sector. Low-income earners also tend to be concentrated in small workplaces, in certain industries and in rural and regional parts of the state. The task force identified links between the low-wage sector and Victoria’s dual system of industrial relations, the dual system comprising those who enjoy protection of the federal system and those who are schedule 1A under the federal system but deprived of the same terms and conditions that all other workers enjoy. The task force also identified that some 356,000 Victorian employees, approximately 21 per cent of the Victorian labour force, rely almost entirely on the five minimum schedule 1A provisions of the act for their conditions of employment. Schedule 1A employees, as we know, have limited access to the benefits that are standard among all other federal award employees.

Approximately 235,000 Victorian employees receive only the minimum rates of pay in the industry sectors in which they work. The geographical differences in workplace minimum rates are also pronounced. For instance, in non-metropolitan workplaces, 22 per cent of schedule 1A workplaces fall in the under $10 per hour wage bracket compared to 8 per cent of workplaces under the federal award system with the 20 core conditions. While Victoria oper-
ated under a significantly deregulated labour market after 1992, there has been no significant increase in job growth levels or decrease in unemployment levels compared with the national average or in relation to other states. This really puts to rest the argument that low wages and conditions actually drive employment growth; they do no such thing. The need for employment drives employment growth not low wages and conditions.

When compared to standards and employment conditions applying under federal awards and in other jurisdictions, employees who rely solely on schedule 1A of the act receive fewer conditions and entitlements than other employees—for instance, no personal and carers leave or bereavement leave and no entitlement paid for hours worked in excess of 38 hours per week. So there is an unlimited range of hours that schedule 1A employees are required to work with no penalties applying. There are minimum sick leave benefits, which are prescribed at lower levels in schedule 1A than they are in all federal awards.

The Australian Centre for Industrial Relations Research and Training, which conducted research for the task force also found that a number of Victorian workplaces continue to operate under a mixture of regulatory regimes. ACIRRT found that 66.8 per cent of Victoria's 1.7 million employees were covered by federal awards or agreements and 33.2 per cent by schedule 1A. Victoria has on two occasions attempted to address the disadvantage faced by schedule 1A employees. In 2000, the Victorian government introduced the Fair Employment Bill, largely in response to the recommendations of the task force, which I have just reported on, and the Liberal opposition in control of the Legislative Council in Victoria at the time defeated the bill.

The other area of significant disadvantage created in Victoria by the referral of the state industrial system to the Commonwealth is that of clothing industry outworkers. Significantly, that is an area that in Victoria covers up to 144,000 people. They are some of the most disadvantaged and exploited employees in Victoria. They are considered in many respects to be contractors, as though they are actually mums and dads with dreams of being small business people. These people have no dreams of being small business people; they are contract outworkers because those who provide them the work make them so and deem them to be so. They do that so that they can pay them appalling rates of pay. They do that so that the outworkers have to provide their own workplace, electricity, machinery and equipment, and their own maintenance. That leads to appalling working conditions that are unregulated and do not meet the minimum standards that we would require for any worker in Victoria. It also introduces an element of unpaid work. We know of numerous examples where for endless hours children help their parents, who are contract outworkers, to ensure that they complete the work they have been given.

One of the real problems we have is that, again, it is argued by the government that, if we are able to provide contract outworkers in the textile, clothing and footwear industry with the same employment conditions that other workers enjoy in full-time factory based employment, we will lose that work overseas. But clearly the sort of work that contract outworkers are strong in is women's fashions. That area is not conducive to long production runs in factories. Companies in that area need a lot of flexibility. They must quickly respond to changes in fashion and have available a large range of styles and sizes at any one time. That is the work that does not go offshore. It is this type of work
that is prevalent in the outwork contract industry. That industry will survive but it needs to be regulated; it needs to be covered by legislation in order to provide at least the most basic of the conditions that we would expect people to be working under.

Home work numbers are also on the increase, with more than 329,000 workers involved nationally and, as I said, an estimated 144,000 in Victoria. Outworkers are mostly migrant women who effectively compete on the open market for their wages and conditions. That competition is exploited by employers who are simply driven by the opportunity to get the most for the least. Not only are these conditions of employment unacceptable; they are in fact illegal. Home workers do not often receive workers compensation if they are injured at work. They have no superannuation and they work under conditions which often are likely to make them sick. They have no regulation of their hours of work and their rates of pay, and they often have to enlist the help of their children, elderly relatives and friends on a regular basis to meet unrealistic production deadlines. Home workers work in an unregulated labour market. They are not small-time entrepreneurs living out the dream of owning their own business; they are an ever-expanding group of low-paid workers who are being systematically denied the benefits of employment demanded by, and available to, the majority of Australians.

I refer again to the research that has been done on the exploitation of contract outworkers. Dr Christina Cregan in November 2001 released preliminary findings from a three-year study after surveying 119 clothing outworkers, which found that the reported average hourly rate of pay for outworkers was $3.60. The lowest rate outworkers reported earning was 20c an hour, by two individuals. The highest rate reported being earned by outworkers was $10 an hour, by one individual. The average number of hours worked per day was more than 15. Seventy-two per cent of outworkers reported working between 14 and 18 hours a day and 62 per cent of outworkers reported working seven days per week, with a further 26 per cent working six days a week. Fifty-four per cent of outworkers were resigned to working because ‘I do not like it but I just have to do it,’ compared to 22 per cent who stated, ‘I neither like it nor dislike it,’ and 12 per cent who stated that they liked their work. Thirty per cent of outworkers reported relying on their children to assist as well as other family members and friends. Fifty-three per cent of outworkers relied on their husbands’ assistance to get orders completed and 99 per cent of outworkers reported working during the school holidays and on Saturdays, Sundays and public holidays.

While Labor support this legislation we do need to emphasise that it is seven years too late. This government has been happy to allow the exploitation of a sublevel of employees working in Victoria since the Kennett government referred its industrial relations powers. Again, while we welcome the bill, let us be under no misapprehension. This government came here, kicking and screaming, to rectify this appalling injustice only because the Victorian government threatened to reintroduce a state system if it did not fulfil its obligations to those up to 600,000 Victorian workers who have been exploited—who have lost potentially hundreds of thousands of dollars in wages and incomes in penalty rates and shift loadings that would have been their entitlement if they had genuinely been in a unitary system and enjoyed the same conditions of employment that the federal system provides to the majority of Victorian workers.

Senator JACINTA COLLINS (Victoria) (11.04 a.m.)—It is my pleasure to present the Labor Party’s second reading position on the
Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003 after practically a decade of involvement in this project. I intend to incorporate most of my speech to facilitate timing in the chamber but there are some brief points that I would like to highlight, given my particular attachment to this issue over many years. I call this bill the culmination of ‘Project Regain Award Coverage for Victorian Workers’. Whilst the Labor Party is often criticised for solely pursuing the interests of union members, those who will benefit from this bill are predominantly non-union members who have resided in a ghetto of non-award coverage for pretty much a decade now—non-award coverage in the federal jurisdiction for seven years. This is an indictment on this government.

I need to pay tribute to a number of people who have worked to try to resolve this problem. My involvement commenced in the early 1990s when in the retail industry I was part of an effort to move as many workers as we could into the federal jurisdiction to avoid Jeff Kennett. And, as predicted, in 1993 Jeff Kennett abolished Victoria’s state awards. When the Howard government came along in 1996 he very quickly referred industrial powers to the Commonwealth, but with the exclusion that these workers could not have awards. This was regardless of the fact that workers in the ACT and the Northern Territory who did not attract the traditional federal award arrangements did get common rule awards. The Victorian workers were only to have five very basic conditions of employment.

To pay some credit to the people who have persisted though this process—and I think this a great example of Labor Party persistence at both state and federal level—work here commenced with the state Minister for Industrial Relations, Monica Gould, and her staffer at the time Nada Delavec, who is now the adviser to the shadow minister for industrial relations. This was then followed by the new Minister for Industrial Relations in Victoria, John Lenders, and his adviser Simon Fenby. Simon Fenby needs to be given credit for finding a way to exert pressure back on the Commonwealth with the proposal that we could establish at state level an institution that could deem federal awards that would be appropriate for Victorian workers. This was Simon’s concept. Added to that concept was my recommendation that we give the Commonwealth just one more chance. After the second election of a Labor government in Victoria, we were in the position to establish a tribunal that could deem award coverage appropriate for workers, but with that bargaining we could also put it back to the Commonwealth and say: ‘This is your choice. We will work towards national uniformity. You can maintain award protection in the federal jurisdiction, but it must be awards. You must abolish this ghetto and you must establish appropriate conditions of employment for Victorian workers.’

This culminated with Rob Hulls. We must pay credit to Minister Hulls, because his bargaining in what I think became an elaborate game of poker was ultimately successful. He believes that the final arrangements adequately cover all of the problems that concerned a number of us. Senator Murray has had many years of involvement, as have I, in the issue of how we improve conditions for not only Victorian workers but also out-workers. This was pretty much the critical issue in the end. I look forward to the assurances that we will get from the minister today, which Senator Murray has already referred to, that it is not intended that this bill would override the new protections that have been introduced in Victoria in relation to pro-
tions for outworkers. On those points, I conclude by saying that I think this is a great achievement. It is a credit to the new Minister for Employment and Workplace Relations, Kevin Andrews, that this situation has finally been resolved. It is a great Christmas present for Victorian workers. That is not unionists; that is workers. I seek leave to incorporate the rest of my speech in Hansard.

Leave granted.

The remainder of the speech read as follows—

The Government’s amendments to this Bill in the House put Labor in the unusual position of being able to support the passage of a Howard Government Workplace Relations Bill.

This Bill, as now amended, signals the end of a decade of neglect of some of Australia’s most disadvantaged workers by conservative governments both federally and in Victoria.

And now, thanks to the determined efforts of the Victorian Bracks Labor Government, the federal government has finally agreed to assist these disadvantaged working Australians.

So how did we get to this point—what is the problem that we will so gladly resolve with this Bill?

It all started in 1993, when the newly-elected Kennett Government abolished Victoria’s State awards.

Awards, State and Federal, are the foundation of fair terms and conditions of employment in Australia.

State and federal industrial relations systems traditionally work in parallel, complementing each other.

The abolition of Victoria’s awards, and whole industrial relations system, left a gaping hole in the protection available to workers in that State.

State awards provide fair conditions of employment through industry or occupation based awards, which apply to all employers within their scope in that State.

These awards, with across-the-board application, are “common rule awards”.

For constitutional reasons, the federal system doesn’t have common rule awards and is restricted to the resolution of interstate industrial disputes.

The Australian Industrial Relations Commission can make awards, but these awards are limited in their application to the employers named in them.

The exception is in respect of the Territories, where these constitutional limitations do not apply and common rule awards can be made.

In respect of standard federal awards, it is up to unions to keep the relevant lists of employers up-to-date, by applying to the Commission to have non-award employers, or State award employers, bound by a federal award.

But of course it is impossible for such lists, no matter how vigilant the union is, to be kept totally up-to-date. It is also a lengthy and costly process for a union to undertake.

In all other States these gaps in the federal awards system are filled by State awards.

But as Victoria has no State awards, over 400,000 employees have no award minimum conditions to protect them.

In 1996, with the election of the Howard Government, these 400,000 workers were totally abandoned by the Victorian Kennett Government, with the referral of the bulk of Victoria’s industrial relations powers to the Commonwealth.

And who are these 400,000 workers?

They are among the lowest paid workers in Victoria—a disproportionate number of these workers earn the bare minimum wage (around 42 per cent, compared with 26 per cent of federal award workers).

These employees are now only entitled to the five sub-standard conditions contained in Schedule 1A of the Workplace Relations Act:

1. A minimum hourly rate of pay for the first 38 hours worked.
   - this is the same rate of pay for work at nights, weekends or public holidays.
   - it also has the third-world effect that employers are not required to pay
employees at all for hours worked over 38 hours a week; and
- there is absolutely no restriction on the number of hours, or time of day, that employees can be required to work.

2. Four weeks annual leave—but with no annual leave loading.

3. Five days sick leave—the usual award standard is between 10 and 15 days.

4. Unpaid parental leave.

5. A period of notice for termination of employment—but no entitlement to severance pay if dismissed because of redundancy.

This means: No bereavement leave at all—no entitlement to even one day off if your spouse or child dies—not even as unpaid leave.

This means: No limit on number of hours or times of the day that an employee can be required to work.

This means: no accident pay, no other types of leave, no allowances for work related conditions or expenses, no dispute resolution processes.

Not surprisingly, these poor minimum requirements are reflects in the actual payments and conditions received by these employees:
- only 6 per cent of Schedule 1A workplaces pay shift allowances;
- only 24 per cent pay higher rates for weekend work;
- only around a third—35 per cent—pay any annual leave loading; and
- less than half—41 per cent—pay overtime rates.

While, of course, all of these entitlements would be standard in federal awards.

So Schedule 1A creates a dual system in Victoria—a sub-standard set of conditions for these 400,000 award-free workers, and another set with 20 allowable matters for workers under federal awards.

In 2000, the Bracks Labor Government in Victoria undertook a review of this dual system. Not surprisingly, it found that the system was seriously flawed and needed fixing.

The review took public submissions and uncovered some of the sad stories of these workers, whose vulnerable position was often exploited.

I have taken these case studies from the Victorian Government’s publication Voices From The Workplace: Submissions to the Victorian Industrial Relations Taskforce, from October 2000.

“Mark is twenty-six years old and has worked in the hairdressing industry since the age of thirteen. He is currently employed as a qualified hairdresser.

As a result of the working conditions currently in place for Victorian workers who are not covered by the Federal Award, I am forced to endure many hardships ...

As a full time hairdresser, I am forced to work between forty-five to fifty hours in a given week..... It would seem to me that the people who wrote the provisions for Victorian minimum standards do not understand that it is not normal for a full time hairdresser on minimum conditions to work thirty eight hours. Businesses are open now for sixty five hours a week.

The hours I am expected to work include one, and sometimes two twelve-hour days. On weekends ... I’m forced to work with sometimes as little as fifteen minutes for lunch or no breaks whatsoever. These days include public holidays and I am told by my employers that if I do not work I will not get paid for the holiday. I have no room within the Victorian minimum standards to negotiate this, let alone negotiate for lunch hours on a daily basis, tea breaks on twelve hour shifts, the supply of equipment or holidays I may wish to take.

In the past, I have worked an eighteen-hour shift on the day before Christmas Eve....cannot afford not to work, as an employee on minimum standards I have no choice but to work on a flat rate of pay, approximately twelve dollars an hour before tax...”
Richard is 55 years of age and works as a security guard.

Working as a Security Guard, I do not receive penalty rates for overtime, weekends and public holidays ... only a weekend rate which is only a dollar or two an hour more.

I call on the government ... for all Victorians to receive proper penalty rates, public holidays as gazetted, and an attitude which reflects the family unit at least. Regular hours worked, where possible, would be a good start.

The unfairness of this system is patently obvious. It is unfair to workers, but it is also unfair to business.

Approximately half of Victoria’s small businesses (with less than 20 employers) are covered by federal awards—this is about 100,000 businesses. They compete with other businesses that are award-free.

During the Victorian Government’s review, employers were openly critical of this uneven playing field. These submissions are also from the Voice from the Workforce publication:

“The submission from the Mildura Fruit Company below was also supported by a number of other local employers including Sunnycliff Orchards and Select Harvests:

Our company is respondent to the federal agriculture award. We operate in an extremely competitive environment under seasonal conditions. In this context, we support the view that there should be a floor to competition.

It is extremely difficult to remain competitive while some companies operate outside of the federal award. These companies are not required to provide penalty rates, severance payments or award pay rates.

This reduces their labour costs in a manner that imposes an unfair competitive advantage against those who wish to provide acceptable minimum conditions for employees.”

Employer associations also opposed the dual system, such as the Victorian Road Transport Authority.

These concerns, from employers and employees, formed the basis of the Victorian Labor Government’s opposition to the system they inherited from their conservative predecessors.

The Victorian Government’s Industrial Relations Taskforce report placed considerable focus on the plight of Victoria’s clothing outworkers.

The Taskforce recognised that: “a multi-faceted approach is needed to address the exploitation of outworkers, particularly in the clothing industry”. (page 135, Part 1 of taskforce Report).

Outworkers are often from non-English speaking backgrounds and are particularly vulnerable to exploitation. This precarious position and extremely low bargaining power leads to two key problems.

The first problem is that those who engage outworkers almost always seek to do so on the basis that outworkers are contractors rather than employees. This aims to avoid employment entitlements and rights of these workers.

The second problem—again in the words of the Taskforce—is that: “it is clear that many outworkers suffer from chronic underpayment of wages”. (page 141, Part 1 of Taskforce Report).

The Victorian Government has addressed the issue of non-payment through its Outworkers (Improved Protection) Act, which sets up a new mechanism for the recovery of entitlements, including from contractors higher up in the supply chain. This Victorian Act also gives all outworkers access to a range of employment rights.

In light of this, it is essential that Victorian legislation that protects outworkers continues to have full operation, notwithstanding the provisions in this Bill.

I am pleased that the Government acknowledges this, and has agreed with the Victorian Government on a form of words that address this very issue, which will be the new section 540A.

This new section will ensure that the federal common rule and outworkers provisions will not override relevant Victorian laws.

From the time it came to office in October 1999, the Bracks Government was committed to fixing this unfair, dual system. Its policy was to do so, if
possible, by achieving changes to the federal Workplace Relations Act.

But if the Bracks Government could not convince the federal government of the need for such changes, it was committed to establishing a State system to provide decent, award conditions of employment for those 400,000 working Victorians.

The Bracks Government repeatedly asked the federal government to amend the Workplace Relations Act.

The then Minister refused these requests. The Bracks Government attempted to then pass State legislation to address the issue, the Fair Employment Bill, but it was blocked by the Liberal and National Parties in the Victorian Upper House.

A new federal workplace relations minister came along—the Member for Warringah. So the Victorian Government asked again—please get rid of our unfair dual system.

And that Minister also refused this request. Repeatedly.

Then, in November 2002, the ground shifted in Victoria. There was a State election, and the Bracks Government secured a historic majority in its upper house, allowing it to pass legislation to finally remedy this unfair, dual industrial relations system.

But the Bracks Government decided to go to the federal minister one last time, to see if he may have changed his mind in the face of the re-emergence of a Victorian industrial relations jurisdiction.

The employer groups in Victoria didn’t want a new State system.

And so finally, after all these years of requests, the Howard Government agreed in principle to this proposal.

Even then, it took many months and two ministers before the Howard Government would reach final agreement with the Victorian Government about the amendments required to end a decade of blatant unfairness.

The Howard Government dragged its heels on this issue, putting up proposal after proposal that would continue to entrench unfair discrimination against Victorian workers.

But eventually the new Minister, the Member for Menzies, did manage to get a deal with the Victorian Industrial Relations Minister, Rob Hulls. And this Bill, as amended in the House, is the result of that deal.

The new amendments take a big and welcome step of allowing the Australian Industrial Relations Commission to make common rule awards in Victoria, finally putting Victoria back in line with every other State and Territory in Australia.

This will allow unions to apply for existing federal awards to apply across the board in Victoria, without the need to list each individual employer, and end the unfair discrimination against hundreds of thousands of working Victorians.

The amendments also ensure that annual leave will be calculated more fairly, which also arose from requests by the Victorian Government.

The injustice addressed by this Bill needs to be resolved as a matter of urgency.

I welcome the agreement between the State and Federal Governments that facilitated the development of these new amendments.

But make no mistake—this bill is no act of generosity by the Howard Government.

For over four years, the Government has avoided giving Victorian workers the same award protection that workers in all other States have.

The federal government would be quite happy to see the current injustice continue. But it has been forced into making these concessions by the threat of the Victorian Government re-establishing its own system.

And it is clear that the Howard Government is gritting its teeth, only reluctantly providing these disadvantaged workers with award protection.

In contrast, Labor is wholeheartedly pleased to support this Bill. We applaud the end of the appalling minimum conditions suffered by non-award workers in Victoria.

It has been far too long in coming, but today is a very happy day for 400,000 disadvantaged Victorian workers.
Senator NETTLE (New South Wales) (11.09 a.m.)—The Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003 gives effect to an agreement between the Howard government and the Bracks Labor government. It follows the referral from the former Liberal Kennett government of Victoria’s industrial relations powers to the Commonwealth in 1996 as a part of the Howard government’s drive to take control of industrial relations laws across the country.

The bill improves the circumstances for some 300,000 Victorian workers by giving the Australian Industrial Relations Commission the power to declare that a federal award shall operate as a common rule for an industry in Victoria, thereby extending the reach of a federal award beyond the parties to an award. The bill also widens the so-called safety net or minimum conditions contained in Part V Schedule 1A of the Workplace Relations Act to improve the conditions for federal workers not covered by federal awards or agreements. However, the bill has serious shortcomings.

Schedule 1 is still deficient in community standards for pay and conditions for workers who do not obtain the benefit of a common rule award. What is lacking at the federal level is a general award that picks up people not covered by a federal award or agreement. Another serious shortcoming of this bill is the way that it addresses the circumstances of outworkers or home based workers in the textile, clothing and footwear industry working in Victoria. The failure of the Victorian and federal governments to satisfactorily address the situation of outworkers in the process of referring state powers to the Commonwealth reinforces the Greens’ scepticism about the professed benefits of moving to a unitary industrial relations system under the Howard government.

My comments will address the problems in the bill as they relate to textile, clothing and footwear workers and why the Australian Greens will be moving amendments to rectify these problems. In order to gain some understanding of the importance of this issue and why we are seeking the Senate’s support for our amendments, I will speak briefly about the situation of TCF workers and the work that their union, the Textile, Clothing and Footwear Union of Australia, and the Fairwear campaign have been conducting to end the rampant exploitation in the industry.

The rolling reductions in tariffs for the TCF industry began under the Hawke Labor government. The search for higher profits has resulted in many Australian based companies moving all or part of their production offshore and relying increasingly on employees working in their homes. The Greens do not assume that all companies using clothing and textile outworkers intend to exploit these employees, but there is no shortage of evidence of gross exploitation of many outworkers. This happens because large corporations put a distance between themselves and the workers who produce the goods they sell. It is not possible any longer for corporations to claim ignorance of the poor working conditions, unsafe hours of work and appallingly low rates of pay that TCF workers endure. Their circumstances have been exposed by numerous parliamentary inquiries at a federal and state level for more than a decade.

There is estimated to be 330,000 home based workers and around 140,000 of them work in Victoria. Most TCF outworkers are women who have migrated to Australia from non-English speaking countries. A study of Victorian home based workers conducted by Christina Cregan of Melbourne University’s Department of Management in 2001 found that the average pay rate was $3.60 an hour, although some people were paid less than $1
an hour under piece work. This compares with a federal minimum hourly rate of $11.80. The women surveyed worked three to 19 hours a day and 62 per cent of them worked seven days a week. In many cases, their families relied on the income to meet essential expenses and their partners and children helped complete the work. There were reports of home workers being paid $3 for an item of clothing that later retailed for $50 or even $100.

Outworkers are not some incidental part of the TCF industry. In 1996 the Senate Economics References Committee report concluded that:

Outworking is now so prevalent that it is not just a characteristic of the industry; the entire industry is structured around it.

The TCF Union estimates that up to three-quarters of companies in the industry in Victoria have the majority of their production performed in private homes. Research conducted by the union revealed that in a number of cases companies employing around six factory workers each employed over 200 outworkers.

The federal government’s latest tariff decision, announced last week, is likely to further entrench outworkers as the core work force in the industry by making it more difficult for Australian based companies to compete with imports. The latest round of tariff reductions comes into effect on 1 January 2005. Tariffs for all segments of the textiles, clothing and footwear industry will be reduced to five per cent by 2015. In addition, the government has halved the amount of financial assistance to the industry under the strategic investment program, providing $747 million over 10 years, compared with the current level of $678 million over five years. This is an industry that plays an important role in the lives of many regional communities, and it has lost one-third of its work force in the past 10 years. One Victorian study has found that one-third of TCF workers who lost jobs as a result of restructuring were never employed again. Many others end up in marginal jobs or itinerant work. This is a dreadful loss of skills for the nation and a tragedy for the people involved.

The City of Greater Geelong, home to more than 60 TCF organisations with a combined work force of 2,500 employees, is a good example of a regional centre in which the TCF industry plays a vital role. It is also an example of the resilience of the sector and the commitment by Australian companies to reinvent themselves to survive the continuous pressure on the sector through factors like government tariff policy. The City of Greater Geelong’s Mayor, Councillor Barbara Abley, speaking on behalf of the Geelong region’s TCF lobby, said last week that the federal government’s decision will seriously threaten jobs in the Geelong region. Like thousands of other Australians, she questioned the economic wisdom of the government’s determination to drive down tariff rates, much lower tariffs than any of our trading partners. She said last week, ‘How can local companies compete when it is far from a level playing field?’

This is the social and economic context in which the parliament is considering this bill. This is why we must use this opportunity to address the exploitation of TCF outworkers. The revised explanatory memorandum to the bill acknowledges the vulnerable position of Victorian TCF outworkers, stating that their position justified additional safety measures. But the bill offers very little and perpetuates a distinction between classes of outworkers that simply encourages employers to distance themselves from what are, for all intents and purposes, employees.
The problem is the division of workers into ‘employee outworkers’ and ‘contract outworkers’, and the different treatment this bill proposes to afford these two groupings. Victorian outworkers are currently protected by the Victorian Federal Awards (Uniform System) Act 2003, which is awaiting proclamation, and the Outworkers (Improved Protection) Act 2003. Under the provisions of these acts, all outworkers are deemed to be employees and are entitled to the same award entitlements. However, the passage and enactment of this bill means the Victorian government now will not proclaim those provisions in the Victorian Federal Awards (Uniform System) Act 2003 that would have given protection to non-employee outworkers.

Instead, this bill enshrines the difference between employee outworkers and contract outworkers. Rather than putting all outworkers on a level footing and providing them with a uniform basic safety net of wages and conditions, the bill draws a dubious line between employee outworkers and contract outworkers, and it condemns the latter to a second-tier substandard set of wages and conditions. Under the bill, contract outworkers will not be entitled to the benefits of all the provisions of the act or the Victorian Clothing Trades Award 1999 but will only be entitled to the modified provisions of schedule 1A and/or the benefits of any award declared to be common rule, only insofar as they relate to pay. The entitlement for contract outworkers appears only to be to recover a minimum statutory amount, and not to receive the broader range of terms and conditions of employment afforded to other outworkers. And in the absence of a common rule award, even this basic rate of pay will be less for contract outworkers than for award employees.

Maintaining this distinction between contractors and employees, and providing for different minimum sets of standards to apply to each of them, is likely to only exacerbate the problems currently facing outworkers in the clothing industry. The dubious distinction between contract and employee outworkers is, in fact, part of the cause of exploitation of outworkers. It has been widely documented in numerous government reports that many outworkers are exploited by unscrupulous employers who provide the outworkers less than the award and deny them other award entitlements—such as leave, superannuation, workers compensation insurance and overtime—because the workers are allegedly contractors rather than employees. These so-called contract outworkers are usually individuals working from their homes and often working solely for one contractor who regularly gives them work. These people are, for all legal intents and purposes, employees but are termed independent contractors by commercial operators who do not wish to pay them the basic legal entitlements of employees.

Most of the protections of the Clothing Trades Award 1999 only apply to employees. Indeed, as the explanatory memorandum notes at page 4:

... many outworkers do not benefit from restrictions imposed by the Award with respect to the contracting out of work.

Defining some outworkers as contractors will ensure that these outworkers will not receive the award protections afforded to employees. So long as unscrupulous employers are able to gain a financial advantage by deeming someone to be an independent contractor rather than an employee, outworkers will continue to be disadvantaged. As the explanatory memorandum notes:

Contract outworkers are often in a particularly difficult situation due to a lack of clarity concerning their rights and entitlements.
The Senate Economics References Committee in 1996 and 1998 called for an end to this ability to make this legal discrimination work against the most vulnerable of workers. The way in which the bill clarifies this is by condemning so-called contract outworkers to a second tier of entitlements. The minimum entitlements that contract outworkers are being denied include annual leave, sick leave, parental leave, allowances, superannuation and all the other rights that remain in awards.

The Greens’ amendments address the problems of TCF outworkers, providing for a unitary, level playing field award safety net to apply to all outworkers. This will be done by providing that the object of part XVI is to ensure outworkers receive the same minimum benefits and terms and conditions as employees. Outworkers in Victoria in the TCF industries will be deemed to be employees for the purpose of the act.

All the amendments do is transfer to the Australian Industrial Relations Commission the protections that would have been afforded to non-employee outworkers had the Victorian legislation been proclaimed. This will remove any incentive to treat contract and employee outworkers differently, thus helping to prevent exploitation in the industry. It will also remove the bill’s enshrining of two tiers of entitlements for workers and employers in the one industry. The amendments will also remove the need for the continued operation of those parts of the Victorian system establishing entitlements for contract outworkers, but will retain the machinery provisions of the Victorian act that address the particular problems outworkers face in recovering their entitlements. It will also allow for the continued operations of the state’s Ethical Clothing Trades Council. It should be noted that the definition of ‘outworker’ is sufficiently narrow to avoid catching genuine arms-length commercial textile, clothing and footwear enterprises. The definition mirrors that in the Outworkers (Improved Protection) Act 2003 and excludes work performed on business or commercial premises.

The amendments also address any possible constitutional inconsistency with the beneficial provisions of the Victorian legislation, by ensuring: the new part XVI of the federal act will supplement, not override, the beneficial provisions of the Victorian legislation; the new part XVI of the federal act will be supported by the corporations and trade and commerce powers of the Constitution until there is a further referral from Victoria; and, once there is further referral power from Victoria of the power to legislate for non-employee outworkers, the new part XVI of the federal act will then additionally operate throughout the whole of the state of Victoria.

The maintenance of the distinction between contract outworkers and employee outworkers has been roundly criticised by the Senate on previous occasions. It is not supported by any of the unions or community groups working in this area and, up to today, was opposed by the Victorian government and the Australian Labor Party. The Victorian ALP government said earlier this year when it passed the Outworkers (Improved Protection) Act 2003 and the Federal Awards (Uniform System) Act 2003 that it would provide common rule awards for all its outworkers.

If the ALP votes against these Greens amendments, it will amount to a fundamental change in approach, one which says to those working 60 hours a week in the suburbs on $3 an hour in Victoria: ‘Despite everything that was said earlier and that legislation passed in Victoria earlier this year, the ALP
is now not prepared to proclaim that legislation and will deal away your basic rights to parental leave, sick leave, allowances, super-annuation and all other basic entitlements of any other employee, simply because your employer says that you’re a contractor.’ I urge the Senate to support the Greens amendments and to deliver justice to tens of thousands of Australian workers who deserve a better deal.

Senator ABETZ (Tasmania—Special Minister of State) (11.26 a.m.)—On behalf of the government I thank those senators, such as Senator Jacinta Collins, who cooperated in incorporating their speeches. Time is of the essence at the moment. In summing up I will be brief. I think most honourable senators in dealing with the Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003 have gone through the history and the background of the bill. So I will not seek to do that, other than to say that the bill will enhance the safety net of minimum conditions for Victorian workers while maintaining the Commonwealth workplace relations system as the single system of workplace regulation in Victoria.

Senator Collins asked an appropriate question during her comments, seeking an assurance from me in relation to the impact of this legislation. If I may, for the benefit of Senator Collins and the Senate, I will quote from a letter from the Hon. Kevin Andrews MP dated 10 November 2003 to the Hon. Rob Hulls MP, Minister for Industrial Relations in Victoria. In the third paragraph, Minister Andrews says:

I confirm that the proposed legislation will be amended to clarify its interaction with Victorian legislation. The proposed legislation will be amended to contain provisions which make clear that neither the common rule provisions nor the outworker provisions (proposed Part XVI) are intended to override a law of Victoria that is capable of concurrent operation.

I trust that satisfies Senator Collins’s legitimate question in that area. Whilst I am quoting letters, I will quote from a letter dated 21 November 2003 from the Minister for Industrial Relations in the state of Victoria to his Commonwealth counterpart, Kevin Andrews. I think the last paragraph on the first page is of some importance for honourable senators to consider the importance of this legislation. Mr Hull’s letter says:

I must emphasise the criticality—

I like that word; I am not sure that it is a word but I think we all get the gist—of this legislation being able to operate from the start of 2004. During the legislated transitional period there will be a considerable amount of detailed work required to comprehensively and fairly implement this initiative. These activities will fall widely, including to employers, employees and their representatives and the Australian Industrial Relations Commission.

We are going to be confronted with some Greens amendments. If I may, I will deal with those now and indicate the government’s response to the matters raised by Senator Nettle. It needs to be understood that this bill is the result of extensive negotiation between the Commonwealth and Victorian governments. I simply suggest to honourable senators that, if an agreement can be reached between a state Labor government and a minister such as Rob Hulls and an Australian Liberal government with a minister such as Mr Andrews, chances are that they have come to some sensible arrangement, some sensible agreement, with which neither side is fully happy but which is nevertheless a compromise that will be for the benefit, as I understand it, of some 350,000 workers.

The Greens are seeking to unwind this agreement. If that happens, there will be no protective legislation such as we are seeking. The amendments proposed by the Greens would remove those parts of the bill that give contract outworkers in the Victorian TCF
industry a right to an enforceable rate of pay. That would be the impact of the Greens amendments. It would seem that the Greens would rather deem all contract workers in the Victorian TCF industry to be employees. Deeming all outworkers to be employees would reduce choice and flexibility in working arrangements and drive genuine contractors out of the industry. To assume that there is never genuine choice and to therefore deem all outworkers to be employees places an unjustifiable burden on legitimate businesses in the TCF industry. The suggestion that there is never genuine choice is based on a false and now discredited social theory of class warfare—

Senator Carr—Really? You’d know about that, wouldn’t you? You’d know all about that.

Senator Marshall interjecting—

Senator ABETZ—that should have died with Leon Trotsky. But it still seems that it is still alive and well in the watermelon greens and also in my friend Senator Kim Carr.

Senator Carr—There’s nothing watermelon about me—no watermelons here!

Senator ABETZ—But I will not be any more provocative, Senator Carr, because of time. The Greens amendments would not fall within the Victorian government’s referral of legislative power. Not only would the amendments therefore cost jobs but also the deeming provisions could not even be enacted by this parliament, as there is no source of constitutional power to give them effect. The government oppose these amendments and we are trusting that the ALP senators will support this bill, as passed by the House of Representatives and supported by their Victorian counterparts. I note that Senators Carr and Marshall are here to give full support to their Victorian government counterparts. The bill represents a significant opportunity to enhance the federal safety net for both Victorian employees and outworkers. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

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

HIGHER EDUCATION SUPPORT BILL 2003

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

Third Reading

Debate resumed.

Senator CARR (Victoria) (11.33 a.m.)—I begin by drawing the Senate’s attention to the fact that this is a very sorry day for Australian higher education. This is a day that many Australians who are associated with our universities will come to regret. When I say many Australians I am talking about not just the nearly 50 per cent of Australians who at some point in their life will see the inside of a university as a student but also their families, their employers and the rest of us who benefit from the role of a university in its contribution to the economy, to our cohesive and tolerant society and to our vibrant national culture.

It has to be understood that there is very deep hostility to what has been done as a result of various sleazy deals that have been entered into in the back rooms of this parliament. This very deep hostility comes not just from the defenders of public education, not just from those in the labour movement and not just from those in minor parties in this chamber but also from those on the right of the political spectrum, such as the people who have been the advocates for deregula-
tion for a very long time—people such as Professor Alan Gilbert and David Kemp’s former adviser Mr Andrew Norton. So it is not just on the Left where there is deep hostility but also on the Right. That is because people are deeply concerned about the consequences of what is being done here today. As one vice-chancellor recently said, this is an uncontrolled experiment. We are going to find that we have an incoherent shambles here. We know that the Minister for Education, Science and Training wanted to put his stamp on the university system. He has certainly done that. In fact, he has put his foot right through it. He has put his foot deep into it, and he is sinking right up to the neck.

Here we have a government that has a package of measures that we understand makes sense in political terms. It has always had a coherence as a political strategy, but it has never had any coherence or integrity as a rational policy document. It has no structural integrity. Right from the start it could rightly be characterised as driven by a cavalcade of hobbyhorses—not just the hobbyhorses the minister himself managed to pick up in a sort of bowerbird approach to higher education but also the hobbyhorses driven by the ideologues within the industrial relations set that have infected what once was known as a ‘liberal’ party in this country. Here we see a minister whose legacy it will be to be known as a shambles within the higher education system. The amendments that were being offered at the death knell last night on the issue of industrial relations, for instance, highlight that shambles within the higher education system. The additional funding attached to this package provides only $67 million for 2004. We spend $5 billion a year. What is the great incentive that you have been able to draw forward here? It is $67 million—not a teardrop in the grand scheme of things.

Senator Boswell—When are we going home?

Senator CARR—Your problem, Senator Boswell, is that you do not spend enough time anywhere near universities. Your real difficulty is that you have great difficulty understanding the simple premises that are being advanced. Your job here is to put your hand up and be quiet. You are not even able to do that properly. What we have here is a situation where, when it is all said and done, the bulk of the money that the government speaks of will not be seen until 2007. We have a group of people that essentially sold us on a promise of what might be in 2007. We have a situation where it is clear now that the government’s program of turning its backs on universities and walking away from responsibility for the stewardship of our great public institutions has been realised. The Commonwealth is able to walk away. I fear that, if this agenda is pursued—and I say to you that it is not over yet—we will see our universities turned into degree mills which will be full of staff cowering in fear, with
students overburdened with debt. If that agenda is achieved, it will render our universities Dickensian factories. I hope that there are enough people in the universities and in public life—the public intellectuals of this country—who are able to come together to prevent this happening. I know the Labor Party will be there shoulder to shoulder with people who will resist these moves and will not let this matter rest here today.

The government has an intention, and it should be understood what the game here is all about. It is about having a highly privatised sector, a system in which the minister, on a day-to-day basis, effectively has unfettered powers to admit new, private, for-profit operators into higher education. We have to remember that there are at least 80 of those sitting there waiting to move in. Not all of them, I think it is fair to say, are of the highest level of quality. Not all of those are the sort of company that those in the higher education system would like to keep.

This legislation still effectively makes no essential distinction between universities on the one hand and the assorted band of private providers on the other. The government’s ham-fisted attempts to assure quality and a modicum of propriety by proposing these arrangements are really all about trying to protect against the inevitable market failure that will arise from this regime. That is why they need to have their hands deep in the bowels of the university system. What they are all about is trying to prevent the political scandals that will inevitably arise from this regime—a situation where fly-by-night operators undermine the international reputation of our higher education system in this country. This new regime, as Professor Alan Gilbert has said, is an interventionist regime of a kind we have not seen in Australian higher education. It remains so. The bill puts in place a regime not seen anywhere else in the developed world. It is reminiscent of the tin-pot dictatorships of Latin America. It is not the sort of system we should see in a country such as this. In voting for amendments last night, four Independents supported propositions that would allow the Australian parliament to dictate to universities what courses they may teach.

Senator Lees—Are we allowed to laugh? We should be selling tickets!

Senator CARR—You think this is humorous? This parliament does not exactly have a great record when it comes to the issue of banning books. But what we are saying now is that it will be legitimate for politicians in this chamber to pick and choose what courses are taught at universities. If you are telling me that that is not reminiscent of tin-pot dictatorships, I would ask you why. That is essentially what we are being asked to do here. We are dealing with basic questions about what it is to be a university, what it is to ensure academic freedom and what it is to ensure intellectual diversity. They have not been protected. The opportunity was there. As a result of sleazy deals, this Senate has turned its back on those issues.

I say to the Senate: the banning of courses to the banning of books is not a very big step. If you think that is the sort of thing that should occur in a liberal, democratic society, you are dead wrong. That is what is involved in this proposition before us. As this bill stands, the government retains an extraordinary range of interventionist powers. It still has the capacity to search and seize whatever it likes. It has unprecedented restrictive requirements in the composition of governing bodies and, of course, it has a whole range of capacities to impose conditions on funding from this parliament. It provides for guidelines that will remove the discretion from
universities as to how they will distribute funding within their universities and what disciplines will be taught.

The government ties the hands of the vice-chancellors; it effectively places them in a blackmail situation. We were told that the bottom line was indexation, that indexation was the Rubicon that could not be crossed. We now see what that meant. We will have a review, a committee, a big mirror in which the minister will look into it. That is what we have got, and some time by 2007-08 there might be some change. We know the consequences of it. We know the hundreds of millions of dollars in costs that are involved. We know the costs that will be borne by students, who under this bill will be required to make up the difference, with increases of 25 per cent. What an achievement! Fee increases have been reduced from 30 per cent to 25 per cent—well, hoorah! If you think that is going to go down with the Australian public, you are dead wrong again. Students and their families will be required to take on additional debt to make up for the increasing gaps in the funding arrangements.

Four Independent senators have become hogtied to the government’s agenda. They have of course been able to deliver the government agenda in which the real rates of interest have allegedly been removed on these new loans, but they have been replaced by a 20 per cent surcharge on fee levels that will apply to this new loan scheme. Economists tell us that the so-called administrative charge is a fair way to impose a shadow interest rate. Most students will not see it that way; they will not see the ‘fairness’ in that at all. They will simply see that they have to pay more than they have got. They will see the cost of education rise by up to $50,000 for each of those persons obliged to undertake these programs.

The last-minute amendments announced by Dr Nelson on the afternoon of 3 December make only minor concessions on these questions. This is the last of the 30 pieces of silver, which of course was enough to ease the consciences of some people to vote for these measures. The government has adopted some of the opposition’s policies on the threshold question for HECS, but on the bulk of the issues it has remained true to its agenda of imposing additional costs on students, additional debt burdens on Australian families. The government is able to walk away from its public responsibilities to adequately fund our incredibly important public institutions.

We have a series of last-minute amendments, most of which remain unimpressive. The situation for universities is that deeply intrusive and onerous provisions still remain which do not change the hardships that will be inflicted on students, nor for that matter on the people who are required to run our university system. Universities, their staff and their students, and ultimately Australians, have been sold out by these measures. We have had a debate in the Senate that has been nothing short of farcical. We saw a list prepared by the government of which amendments were to be carried irrespective of merit and which amendments were to be defeated irrespective of merit. That was the deal. That was the core of the deal. That is what delivered it. We have seen various lobby groups acting as the whips for the government to deliver that.

What is really quite extraordinary is not just that senators were not prepared to argue their case, not able to argue their case, but that today Senator Harris is not even here. He has not even had the decency to come in here. We have been asked to give him a pair, and we could have denied him a pair. In my opinion that would be wrong because it would not be an appropriate use of our ca-
pacity—it would distort the will of the Senate.

Senator Patterson—You’ve never had a pair in your life; that’s appalling.

Senator CARR—It is quite clear what the numbers are so we will be granting the pair, but we have no illusions about what has been going on here. People do not have the decency to argue their case. They do not have the capacity to understand most of what has been said in the debate, because we have had no response. What is more, they do not even have the decency on such a measure to actually turn up and deliver the coup de grace.

It strikes me that, right from the start, this debate in this chamber has been a disgraceful misuse of this parliament. This legislation as it stands has sold out the sector; in my judgment it has deeply sold out the interests of the country. We have major universities such as the University of Western Sydney and the Victoria University of Technology and a number of other institutions that have been left high and dry. My understanding is that the last offer, the chequebook arrangements, for the Batchelor Institute of Indigenous Tertiary Education was $3 million, offered at 11.30 at night just before the vote was to be taken. No detail was given as to what the arrangements are and no detail was given on how such an amount of money will be offered. Of course we want to see more money spent on Indigenous education in this country, but it would be reasonable to know what the money is to be spent on and what the conditions are.

We now discover that the government’s grand and generous offer is all about bribing people, to the extent that the Northern Territory University, now called Charles Darwin University, will amalgamate with the Batchelor Institute of Indigenous Tertiary Education. That is the price. That is what the money is for. It is to make sure that there is an amalgamation between Batchelor and Charles Darwin University. What sort of an arrangement is that? And did the senators who were involved in that understand that that was part of the deal? That is your problem: when you play these games late at night in the dark back corridors of this building you have to know what the cost is—and the cost for the Batchelor Institute of Indigenous Tertiary Education will be that they will not exist.

Quite simply, we have senators here who do know something about higher education and they have been sold down the drain. Look at the University of Western Sydney. How many Liberal MPs in that region have turned their backs on the University of Western Sydney? They will be revisited on these issues, because the Labor Party will take the fight up to the government. We will take the fight up to anyone who wants to argue this case now. We will take the fight up in the next election. We are not going to let this matter rest here. These are issues on which we will campaign, right up to the next election, and you will be rejected, because this package is wrong. *(Time expired)*

Senator LEES (South Australia) (11.53 a.m.)—I really think that Senator Carr should go on the stage. That is one of the best productions of absolute nonsense that I have heard in a long time—from wild assertion to wild assertion to nonsense and more nonsense. The disasters are apparently out there and all universities are going to now fall into a large black hole! Senator Carr, we did not stand up time and time again last night, argue the point and try to refute your nonsense, because you simply stood up and gave us another dose of nonsense. I have put together a few notes on some of the incredible claims you have been making, but I also
want to make some comments about why I bothered—and I am only speaking for myself here today— to work with this government to get more money flowing to universities.

A number of speakers suggested: ‘We don’t really need to do this. Let’s just wait and see what happens. Let’s let universities muddle along.’ That was one of the suggestions. Let universities muddle along with the staff cuts they have had to face over the last few years; the large lectures; the tutorials that may happen and, if they do happen, could have 30 or more students in them; the staff who are overstressed; the professors who have far too many students, who do not get time any more to do any research they should be doing; the inadequate facilities; and so on. I chose not to walk away and simply let the universities muddle on.

The other suggestion that was made was: ‘Wait for the next government. Everything’s going to be fine. After the election this other government will come in and everything will be fine.’ I have great faith in Jenny Macklin. I know that, if she got her hands on the purse strings, she would release perhaps $500 million a year into our higher education sector. But I have listened to some comments by the new leader, Mr Latham, who actually favours full deregulation of universities. So it would be interesting to be a fly on the wall in the Labor Party caucus when they decide what their policy really is on universities.

On the environment, some sectors out there have been saying to me since 1999, when I worked on the EPBC Act, ‘Don’t work with this government. Wait. There’ll be another government that will work with you and do everything you want on the environment.’ Fortunately I did not listen, because we have an EPBC Act out now that is working to the point where people have actually been locked up for trashing Australia’s environment. It is not perfect, it still needs work, and we worked on it again only this year when we put the heritage legislation in under the EPBC Act. So now, if you trash Australia’s built heritage, you will also run the risk of massive fines, if not being locked away.

To those people who keep writing me emails, ringing up and saying, ‘Don’t work with this government, wait for the next government,’ I say that I am not quite sure how long we will have to wait, but I am of the opinion that you draw a line in the sand and if you can make some progress you make some progress; you do not sit around hoping that one day you will get 100 per cent. People in this place who keep trying for everything and accepting only 100 per cent get 100 per cent of nothing. We had to work with the government on this bill—indeed, one of my colleagues suggested that I should disclose that my husband and I this year had six of our kids at university—because I know what pressures are like at universities and we could not wait another two or three months, let alone another 12 months, three years or six years down the track.

How will I judge the success or otherwise of this legislation? For me it is about equity. It is about those students who we know are missing out, who firstly are not even aspiring to go to university. I have taught them in my time as a teacher before I came into this place. They are kids who drift off at 15 and 16, who are very talented, very bright, but it is not even on their horizons. Through this legislation, starting next year, we have a series of scholarships that will involve the schools as well as the universities determining who gets them. As we look down the track and review this, in 2005-06 and beyond, for me one of the major tests will be not just whether lectures are smaller, tutorials have fewer students in them, staff are under less stress and universities are functioning more as they should, with more research
time et cetera, but also who is actually getting in. And the first group of students I will check on are those from the low-income suburbs of Adelaide, those in those public secondary schools who will now have an opportunity to at least get something towards their university education—and that will not be means tested under the Social Security Act so they can also access their youth allowance.

Also, in South Australia we have guaranteed that not only will there be no loss of places but there will actually be new places. So part of the test will be looking at how many more students are able to access universities. In the package there are a number of equity measures, including three specific equity measures targeted at Indigenous students. So there is another benchmark to measure this legislation by: are we seeing more Indigenous students not only able to access university but actually able to complete it?

There is another very important group of students that will be able to access some of these 30,000 scholarships—that is, the rural students, particularly in my home state of South Australia. For students able to get into a four-year course at Flinders University those scholarships will be worth $24,000. Again, the four of us working on the cross-benches were able to ensure that these students will not be means tested so they will not lose any income from their youth allowance, if they have been able to get it—which is the next battle. This is not the end of the road. The next battle is to get all of those scholarships given out by universities also free of the means test.

We have enabled students to access loans without any real interest rates applying to them. Very importantly, there is the increase in the HECS threshold next year from $24,000 to $35,000, and then $36,000 and on from there, and indexed. The reform package has in it—and I guess this is one of the things that Senator Carr was referring to as having strings attached—guidelines for universities. I have no problem with universities having some guidelines that relate to supporting on equity grounds those students who are going to need that support, particularly students with disabilities, which is another cohort that it will be interesting to watch as this legislation comes into effect. It will be interesting to see whether the number of students with disabilities accessing university also increases and the retention rate for such students improves.

I know the potential is certainly there for the scare campaign that is going to go on about the potential for an increase in fees. I heard the Vice-Chancellor of the ANU this morning assuring us that they have no intention of increasing fees. I have spoken to the vice-chancellors at USA, UWS and also Flinders and none of them have any intention of lobbying for an increase—indeed, they are going to lobby against increases with their governing bodies. We will not see that potential increase in HECS charges. We may see some flexibility and I, for one, do not have any problems with some flexibility. I must also remind the Senate that there is an opportunity here to decrease HECS charges.

I cannot close without saying on Senator Harris’s behalf that he had a longstanding commitment in North Queensland, not just for today but following through until 19 December, that was extremely difficult, if not impossible, for him not to honour, and he has had to start the long circuitous travel process by car through Queensland. So it was not any lack of interest on Senator Harris’s part or any lack of commitment; it was a longstand-
ing engagement made before he realised the Senate was going to sit today.

I will close by saying that I look forward, firstly, to monitoring this legislation with interest and, secondly, to working on those other issues. Looking at the package as a whole I think I could say that I have about 85 per cent of what I had hoped to achieve. There is more money needed and there are further changes to the scholarships needed. There is a list of things that I will now work towards. But 85 per cent of something is a lot better than 100 per cent of nothing.

Senator TIERNEY (New South Wales) (12.02 p.m.)—I rise today to speak on the third reading debate on the Higher Education Support Bill 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003. These are the most important reforms in this sector ever. I was in Minister Brendan Nelson’s office last night at midnight when a call came through from the Prime Minister in Abuja and, according to the Prime Minister, these reforms are the most significant reforms that have gone through the parliament during the time of this government in any area. So the closing of this debate is most momentous.

Senator TIERNEY—I would like to start by paying tribute to the four Independents who have helped the government put this package through under repeated attack and abuse, particularly from Senator Carr who has acted like a spoiled child on this because he has not had his own way. He thought this was all going to go down in flames, that it was going to be deferred and the government would be struggling with this next year. To his great dismay, it has gone through before Christmas, and therefore has set the university sector up well for its future.

The other people that I would particularly like to thank in this process are the vice-chancellors and other people in the sector who worked with the government over this period. We had a very long review process. We started the process in about March last year. We had a considerable number of consultations around the country. The minister spoke to all groups, and people put in submissions. We worked with community groups, with business groups, and with the universities themselves. Through that process over the best part of a year we hammered out the broad outlines of these reforms. That has been refined through the processes of the Senate until we obtained the package that we are passing today.

There was one furphy, which was of course the Senate inquiry of the references committee. I would again make the point that we need to look at the procedures in this place whereby a piece of legislation does not go to a legislative committee but actually goes to a references committee as a political ploy so that the Labor Party can control who the witnesses are and where the inquiry is held, as well as controlling the press. As it says in Yes, Minister, if you make the train tracks head in a certain direction that is the way the train will go, and that is certainly what they were trying to do with that inquiry.

The legislation did come back to the Senate and I think it is a great credit to the Senate that we have had such an exhaustive process and such an exhaustive debate with all parties taking part. The government, which does not have a majority in the Senate, has had to make its case and persuade a majority of senators that they have to accept the case. That is the point we have reached today. In terms of the major reforms that have taken place as a result of this bill, I think we now have an excellent package on which the universities can go forward into the next century.
I would like to remind the Senate of where this country has come from in terms of the university sector. If you go back to 1955, you will find a university sector at that time that had 35,000 students. It was about the size of Sydney University today. We now have 720,000 domestic students in this country and over 120,000 overseas students. We have a sector that has grown enormously, and the way in which we have managed it and kept the resources up to it is a great credit to all governments. It has been difficult at different points in time, and since 1961 you can count seven occasions when people have said universities were in crisis. Each time governments have responded in different ways and have re-engineered the system, and that is certainly what has occurred during this process that we are now coming to the end of.

We are heading into an information age with a knowledge based economy that is going to be the foundation. It is absolutely critical that the universities are in a position to play a role in that—not just in the economy as a whole but in the many regions across Australia which have universities. As we move forward into this new era we need a university sector that is properly managed, properly resourced and set up so that each university can fulfil its own mission.

In this package we have set up a funding mechanism that will provide this base for universities to move forward. It is a funding mechanism which has evolved over the years from one which was totally dependent originally on government to one that is a mix of public and private funding. Indeed, a lot of this debate has been about the nature of that mix. The full public funding that we had under the Whitlam government led to the impoverishment of the sector. It was always dependent, year after year, on the budget that was available and the other priorities in the budget. I worked in the sector at that time and I saw the strength sapping out of the system because of that decline in the resource level per student. It was a Labor government that was eventually mugged by reality in the late 1980s and it was a Labor government that brought in a private-public funding mix. This private-public combination that we have was begun by a Labor government. We supported that at that time because we thought that was the way to go. The HECS system was brought in so these fees could be paid back through the system and the government would then have sufficient funding. This is the system we have created. This is a system where we have not only a proper mix of funding but also proper governance. It is a credit to all those involved, particularly the Minister for Education, Science and Training, who has guided this process through.

Senator CHERRY (Queensland) (12.10 p.m.)—I rise to speak because in my view it is a very sad day. I listened to Senator Lees indicating that with a bill like this you have to draw a line in the sand. In my speech in the second reading debate I did do that. I outlined 12 criteria on which I thought this package would need to be revised before it could be supported. I have been scoring the deal against those particular criteria and I come up with 4½ out of 12, which to me is a fail, and as a fail it deserves to be defeated.

I do want to acknowledge the areas where the Independents have made some progress. I think that is worth noting. The big tick was on the HECS repayment schedule. Last night Senator Harradine was lamenting that we on this side of the chamber were not giving enough credit to that. I am pleased that Senator Harradine has used his support in this place to undo the damage he did by lowering the HECS repayment thresholds in 1996. The HECS repayment threshold which will now
come into play in 2004 will be a significant improvement.

I also want to acknowledge that the industrial relations issues have been largely fixed. The devil is always in the detail in industrial relations, Senator Murphy, and I think that clause will end up in the Federal Court eventually and we will see how it sorts out—but it is the NTU’s money so let them worry about it.

I am disappointed that the governance reforms were not fixed. I was a member of the University of Queensland senate, which is constantly criticised. It has 36 members. I spent three years on that senate. It is one of the most effective senates in the country. That university has been voted University of the Year on several occasions. Yet now, under these reforms, that 36-person senate, which results in having enough people to have decent committees oversight the university from a governance point of view, will have to get rid of half its members, for no benefit to that university. It is very unfortunate. I am pleased the PELS interest rates have gone. That is good to see.

Senator Stott Despoja interjecting—

Senator CHERRY—On the undergraduate fees. I am actually pleased about that too because it makes fee places for undergraduate places that much more difficult. They have been very quiet about voluntary student unions so I do hope that Senator Harradine and Senator Murphy let us know whether that bill is coming up next year. I have not seen that mentioned in any of the minister’s statements.

I am very disappointed about the income support arrangements. Senator Lees said in her speech: ‘For me it is about equity.’ She was very excited about the number of scholarships—13,600 scholarships by 2007 for rural students to be shared between 116,578 students from rural areas. That is, roughly one in nine rural students will get a scholarship—whoopy-do! For students from a low socioeconomic background there will be 17,600 scholarships by 2007 to be shared between 97,156 students from low socioeconomic backgrounds. That is one in five, so it is a bit better there but still nowhere near good enough. The university scholarships are still going to be means tested, notwithstanding the fact that universities offer quite substantial scholarships and universities are proposing to increase the number of scholarships. It is very unfortunate that those issues are still not dealt with.

Income support generally is the great missing link in all of higher education. It is quite clear when you read through all of the various data that the squeeze on students is such that students are no longer coming to universities. I want to refer very briefly to the submission to the Senate from the university equity practitioners who made this point very strongly by arguing that students are debt averse. The studies from the UK chancellors do show that. The key categories that we are trying to ensure do come to university are those bottom 20 to 25 per cent that I have been obsessed about all the way through—the equity targets. They are the ones who are going to start disappearing because of the increase in fees. It is worth noting what the universities’ responses will be. I know the vice-chancellors have been crossing their hearts and hoping to die, saying that they are not going to increase their HECS fees. I do not believe them. The signals in this bill are such that they will have no choice within three or four years, particularly with respect to the higher value degrees. A 25 per cent increase in HECS charges on medicine will increase the cost of a medicine degree by $6,400. You talk to the equity practitioners and they are saying that increasingly we are seeing the people from the target groups—Indigenous students, low-
income students—enrolling in lower value courses rather than higher value courses. They are still going to university but not enrolling in those higher value courses because they are debt averse. That is also coming through the DEST research.

I also want to note the impact the increase in HECS will have on university students, because it is really unfortunate. We have some real data—the doubling of HECS in 1997 on the vote of Senator Harradine and Senator Colston and the impact that has had on participation. The proportion of students in universities from a rural background has fallen from 18.4 per cent in 1991 to 17.4 per cent in 2002. The biggest fall in rural student participation was actually in the state of— and this one amused me—Tasmania where it fell from 41.6 per cent to 39.7 per cent of students, followed by South Australia where it fell from 12.3 per cent to 11.2 per cent. I know the extra rural scholarships were of huge benefit, but eight out of every nine rural students will miss out on a scholarship. There has been a big fall in Indigenous students going to universities since the abolition of Abstudy last year—a fall from 4,000 students to 3,500 commencing each year. Probably the most concerning fall from my point of view has been the huge fall in mature age students going to university. These are all official DEST figures, by the way. The proportion of students who are aged over 30 fell from 28.1 per cent in 1996 to 25.6 per cent in 2001. That is the equivalent of 7,500 fewer mature age students going to university each year. The proportion of part-time students fell from 39 per cent in 1996 to 32.8 per cent in 2001. I acknowledge that the change in the HECS threshold will probably improve the participation rate by some part-time students—and that is worth noting—but certainly the increase in HECS is really going to continue to impact on the participation rates of mature age students, part-time students, rural students and Indigenous students.

There is, of course, the broader issue of students from lower socioeconomic backgrounds generally. The research on that has been canvassed in the committee report and the debate earlier, and I do not want repeat it. I just think it is really sad that we have senators who I have always regarded as very progressive and very supportive of equity outcomes, such as Senator Murphy, Senator Lees, Senator Harris and Senator Harradine, voting for a 25 per cent increase in bills. The most revealing comment I have heard in this debate in the last 24 hours—and I apologise to all my opposition colleagues for saying this—was from Senator Tierney, who was in here only a few minutes ago before he got his sit-down orders from Senator Ian Campbell. His first comment was that the Prime Minister had said that this was the most significant reform the Senate had passed this session. That is dead right. Twenty-two years ago the first bill that the Democrats in this place sought to block was an attempt by Treasurer John Howard to increase fees for university places. Twenty-two years later he has got it: he has got a very large increase in fees. We will surpass Korea and probably the US over the next three years and become second only to Japan in our requiring the most from students going to university. We will ensure that the Go8 starts to pull away from the rest of the universities in terms of differentiation and resources. Those universities already have the poorest performance in admitting students from lower socioeconomic backgrounds. We will see those students increasingly pushed into the suburban universities, because they are the ones they can afford to go to.

I am very saddened by this package. I would have liked to have seen the Senate
insist that the government come up with a better package. It does come down to political management and political skills, I suppose. It is very hard to vote down $1.7 billion, notwithstanding the fact that 11 out of 39 universities would have been worse off under this package as it was originally presented. Now it is down to only nine out of 39 that are worse off in the first year. But sometimes to put pressure on the government to come up with something better you have got to. I have voted down bills in this place before, leaving a message to the government to come back and negotiate. Sometimes that is what you have got to do.

It is unfortunate that the balance of power that we have in this place has been squandered to come up with a package that is going to really make it so much harder for rural students, for Indigenous students, for mature age students and for poorer students to get into our universities; that is not going to deliver a benefit in terms of a funding outcome to nine out of the 39 universities around Australia; that has failed to fix issues of income support; that actually plays divide and conquer by leaving nine out of 10 deserving students without a scholarship; that ensures that university scholarships are deducted by 43 per cent for the income test for social security and income tax—43 per cent of university scholarships other than fee waiver scholarships will disappear. All of this is unfinished business and we should have made the government do better.

I will sit down now, but I do want to note my disappointment that we have got to this point. I believe the universities could have survived another year or two whilst we put pressure on the government through the election campaign to come up with something better. I am particularly disappointed from a Queensland point of view because of the fact that Queensland has the highest proportion of students from a lower socioeconomic background of any mainland state and the highest proportion of rural students. We will see a lot of students not getting into Queensland universities as a result. I am disappointed also because their expectations were raised by Senator Harris, who made it quite clear in his public statements in October—in fact, he gave a pledge to the students of Queensland—that he would not vote to increase their university debts. He has broken that pledge. That is very disappointing because I think consistency in policy is very important. I give this package 4½ out of 12 and will be voting against it. It is a pity that we could not make the government do better.

Senator MURPHY (Tasmania) (12.21 p.m.)—In this process, as is the case with a lot of legislation that passes this parliament, people talked to one another and had discussions with a whole heap of people, particularly those with a direct interest in this higher education legislation. I set about, as did my other colleagues, having those discussions with a view to seeing whether something could be worked out. That happens. If you call that ‘deals being done’, there have been many deals done and there will continue to be deals being done through this parliament. Not one of them will be perfect and not one of them will be agreed to by everybody.

I remind the Democrats that I was totally opposed to the outcome in respect of the GST, but I know Senator Cherry thought it was a good deal. I have seen deals done by the Labor Party in respect of some issues that I also have not agreed with, but that is the process here. At the end of the day, I have to act on the advice that I am given. I am given advice by the people directly involved in the university sector, particularly the vice-chancellors, who said that they needed to get something in place. They have had enough years where they have, to use Senator Cherry’s words, ‘been muddling along’. It was a question of how much more they could
muddle along. The information coming to me was that they could not continue to muddle along. Despite the fact that the package is not the perfect package, it does at least put something down that they are comfortable with.

I appreciate the criticism in respect of the potential for HECS fees to rise up to 25 per cent. I do not sit comfortably with that. But it is not totally about the students and it is not totally about the vice-chancellors. There are others who work in universities and, according to the information I was given, some of those would be likely to lose their jobs and some may well still lose their jobs. But, despite this not being perfect, it was at least, according to the people that I rely on for information, heading in the right direction.

I am not going to debate all the issues that Senator Carr raised, some of which he made incorrect assertions about. Selfishly, in terms of my state, this outcome means that the Tasmanian university will be better off to the tune of about $210 million out to 2010. We will get an additional 1,600-odd new places, 550 of those next year. Four hundred of those will go to the north and north-west of the state, and that will underpin the security of the Launceston and Burnie campuses in particular. It will provide a great opportunity for potential students in those areas and it is important that we build on that. As I said, I say that selfishly.

There is a clear position that no university will be worse off as a result of this legislation. I have not received a letter from any university, as a result of this package going through, that said that this is a bad package for them—not one. We received many requests from many universities in respect of their particular circumstances and we sought to address those, as anybody would. That is the process. The University of Western Syd-ney, that was going to be worse off, is now not going to be worse off.

Senator Cherry interjecting—

Senator MURPHY—I know Senator Cherry is interjecting when he is not in his seat but let me assure you, Senator Cherry, I have a letter from the vice-chancellor to say that.

Senator Stott Despoja—I spoke to her at 6.10 last night and she didn’t seem to think so.

Senator MURPHY—You may have spoken to her, Senator Stott Despoja, but I am saying that I have a letter to the effect that they are happy with the situation. Insofar as some of the issues are concerned, it is an unacceptable position because governments have not put enough money into higher education for years. There has been a practice of trying to shift more costs onto students. As I have said, I do not sit comfortably with that. To try to offset that, we have brought back the repayment threshold to somewhere near where it ought to be. In fact, it is even higher than the Labor Party suggested. Their amendment took it to $35,000 in 2005-06. In 2005-06, under the amendment that the Independents sought, it will actually be worth $36,184. So whilst we did not get the perfect outcome, and I will accept the criticism for that, at least it is a step in the right direction.

I thank the Minister for Education, Science and Training, his staff and people from the Department of Education, Science and Training for the help that they gave me, for providing the information and for the way in which they were frank and open in their discussions. The minister took a very positive role, in my view, in trying to get this package to where it is right now, which is passing through the Senate. Despite whatever criticisms people may have, certainly from my perspective the minister played a very posi-
tive role and he should be congratulated for that.

The package, in terms of the years out, does take the universities above their normal CAF funding levels. From a government point of view that is at least a step to a better position than where they have been for some years now. At the end of the day, we have not got the perfect outcome but I think we have an outcome that at least is heading in the right direction.

Senator STOTT DESPOJA (South Australia) (12.29 p.m.)—I rise as the Democrats' higher education spokesperson to speak on the Higher Education Support Bill 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003. While I am aware of time constraints, I must of course address this legislation at the third reading stage not only as an indication of its seriousness—we feel that this is arguably the most significant legislation since Federation in terms of the higher education funding sector—but also because this is an issue that is dear to my heart. I got into this parliament eight years ago this week. One of my reasons for running for parliament was my unshakeable commitment to education being publicly funded and accessible to all. I do not resile from that commitment and nor does my party.

People may argue—certainly there were interjections to this effect last night—that the world has moved on, that we have fees and charges in place and that we have a HECS system. Back in 1986 and 1987 when the HEAC and HECS bills were being debated and the issue of the unified national system was the hottest debate in higher education, people warned that it would be the thin end of the wedge. Most policy makers and legislators scoffed at that because they thought that there would be sufficient caps and this would be looked after. They thought that, because of the way the HECS system, for example, was structured, it would be fair and would encourage participation.

What we have seen is a massive distortion of that system, particularly since 1996 when the Howard government got into power. We have this bizarre system in Australia, unlike any other in the world at this stage, whereby students’ contributions are based on their potential income and their course costs—an extraordinary combination. Then we got a three-tier system and, in 1996, a lowering of the threshold at which graduates begin to repay their HECS debts, which made it all the more unfair. Combine that with the opening up of institutions to full fee paying undergraduate places, the deregulation of the postgraduate sector—something that had already occurred with overseas students—and a range of other changes, and you start to present barriers and obstacles to education, particularly for disadvantaged students, that many will not be able to overcome.

This package that we passed with amendments last night will change lives. I do not think senators are seeing it within the context of families, individuals, students or aspiring students. Debt is a psychological and financial disincentive to participate in education. We know that. The research tells us that. Of course we now lack independent government research under this government because we abolished the Higher Education Council—in fact we abolished NBEET—in the late nineties as a consequence, I presume, of this government’s unwillingness to see independent analysis of the impact its regulations and its policy changes were having on the sector.

I want to reflect on the debate last night. Senator Carr said it all: this debate was a sham. Hundreds of amendments were not discussed singly and were not even debated. There were no counter-arguments put to our amendments, let alone any indication from...
Independent or other senators as to how they would vote on those amendments. There was no point, I suppose, because the deal had been stitched up. Like others in this chamber, I recognise that deals are a daily part of our deliberations and of democracy in this place. I do not like bad deals and I certainly do not like it—in fact I am offended by it—when people who vote for those deals do not even know what they are voting on, as people did not know the amendments that were being debated last night. I could have thrown up any amendment last night, along with Senator Carr and Senator Nettle, and no-one would have been able to debate it, particularly in relation to the accountability measures, the ministerial discretion curtailment measures, indexation provisions, FEE-HELP, interference in institutional autonomy—you name it. We went through literally hundreds of amendments on these issues yesterday and last night with minimal, if any, debate and certainly a lack of counter-argument.

The best argument I heard was against the amendment that was lost in relation to a university not being worse off—that is, the Democrat amendment that would have ensured minimum grants for the next few years, that would have ensured that no university was worse off, as promised by the minister. The defeat of that amendment exemplifies the entire debate on this legislation. The government’s argument against it was that it was ‘counter to the underpinning framework’. What does that mean? Other senators are so sure that their deal will secure funding for the institutions to which Senator Carr has already referred—UWS, VCA, VUT and particularly multicampus institutions—which are not going to be better off under this package. Contrary to the comment that the University of Western Sydney are happy with this package, they are not happy little sunbeams. I tell you what: if you believe that the vice-chancellors as a whole are happy with this package you are kidding yourselves.

One of the main concerns the vice-chancellors had that we identified was indexation. The indexation provisions in the Higher Education Support Bill are a joke; they are not there. The Democrats moved an amendment to increase indexation or introduce indexation provisions akin to those of schools, because currently universities are losing. They have a shortfall of around three per cent each year as a consequence of not being indexed the same way as schools. That means that we have seen a loss of between $600 million and $700 million through an indexation shortfall since the early 1990s, when the Labor Party was in power. Nothing has been done to rectify that except a promise that there will be a review which will report in 2005 with a view to indexation after 2007-08—and people bought that.

On industrial relations, we must make it very clear on the record today that the link between funding and industrial relations has not been severed—it has been watered down. There was an amendment in my name and an amendment in the name of Senator Carr that would have broken that link. Contrary to news reports and press releases, it has not been severed. It has been watered down as a consequence of a government amendment that was amended by Senator Murphy. Let us not fool ourselves that there is no conditional link for that funding and no chance that it could be interpreted in such a way—we will have to test it—as to include those issues. Our amendment would have severed the link. That amendment was voted down.

In relation to fees and charges, I echo the comments of a number of senators here. It is a sad day. I know the minister’s press release says that it is a new day and the AVCC says
it is a new deal. It is a bad deal. We already have among the highest fees and charges in the industrialised world. This package jumps us to almost the head of the queue. At a time when the Tories in the UK are advocating the abolition of tertiary fees, the Blair government is a little nervous about trying to implement its strategy on tertiary fees because people are recognising not only the political consequences but also the meaningful social and intellectual consequences, and that is that if you put up fees and charges poor kids are more likely to miss out. Poorer families and students are not going to be buying those up-front, full fee undergraduate places which Senator Vanstone referred to so lovingly in the chamber last night—it was really nice of these richer kids to take a place and leave a HECS liable place for a poorer student. Therein lies the dilemma.

Apart from the quality implications—because we know tertiary entrance scores go down for some of those full-cost places—the poorer students or middle-income students cannot afford to buy a place. You immediately have a two-tiered system. You have a double standard for the wealthy and for the poor. That is the beginning of the end of quality intellectual pursuit in this country—not that the government agrees with any of those things, otherwise it would have put them in the objects of the act. But, no, the government does not want to enshrine the very principles to which universities and others aspire in the legislation that actually governs the institutions and pays the money to them. There is nothing about academic freedom, autonomy or the pursuit of ideals. Instead, there are only the very basics. It is quite an anti-intellectual approach, but I suspect that suits some people. Last night’s debate was certainly an example of that anti-intellectualism.

There is a glaring omission in the Crossroads report and review and a glaring omission in this legislation of any consideration of student support—and if I hear another person suggest scholarships are the answer I tell you! Not one person who had influence on this legislation last night voted for an increase in the amount and number of scholarships as put forward by me—and I am not sure if the Greens had a comparable amendment. An amendment was rejected that would have brought scholarships almost in line with the old age pension. Parity with the old age pension! And we could not get that through. They are token scholarships designed to seal the deal but not actually make a meaningful change to the lives of Australians, particularly Australians from traditionally disadvantaged backgrounds.

So you have up-front, full-cost fees and you have HECS places that may increase by 25 per cent. I know many senators have been quick to say that it is not happening in their state or that they heard Professor Chubb on radio this morning suggesting it will not happen at the ANU—or hoping it will not—and that they have spoken to vice-chancellors at the USA and Flinders, though there was the notable omission of the University of Adelaide, but there are institutions all around this country, particularly the group of eight, that acknowledge on record that they will be increasing their fees and charges. They are worried because they know the impact that this potentially has not only on the decision of students to go to university but also on their lives afterwards. What happens with their lives once they accumulate that particular debt?

There were a number of people in the chamber last night, and I make specific mention of Senator Carr. He and I have worked on the HEFA bills for a long time. He has been here since 1993; I have been here since 1995. Before that my job was as a higher education legislation adviser. I think this is the saddest day for higher education policy.
It is incredibly frustrating, and it makes me angry too, because I have my degree and most of the people in this place have too. Some of them got it for free—as they should. A publicly funded university system is the right way to go. A progressive taxation system where the community pays back is correct, not this distortion based on your projected income earnings or maybe what your course costs. What a joke! Students who study law now will completely cover the costs of their course. That is not a contribution scheme. This government treats education as a revenue-raising measure. It is not; it is about investing in the future of the nation. We have forgotten that, and we have certainly forgotten students who may never have contemplated a degree.

As for the issue of training, I am not going to get sidetracked with that today. I know how important the vocational education sector is. I take great offence when senators suggest that the debate should have focused more on that last night when it is a higher education bill. We will have that debate with ANTA. I take great offence at the suggestion last night that students should be thanking the Independent senators for increasing the threshold—the same threshold that we would have almost automatically reached had Independent senators not voted it down back in 1996. What a joke! Students being grateful? Students have nothing to be grateful for under this package except a lifetime of worry about debt and debt repayment.

Scholarships, student income support, increased fees and charges, up-front full-cost fees, the lack of an independent regulatory structure to assess funding for higher education institutions, the reference to the Indigenous Advisory Council, curtailment on administrative powers, ministerial discretion and interference in university autonomy, additions to the objects of the act and a curtailment on the extraordinary invasive privacy provisions were all voted down without debate—probably without even knowing it. That is the irony of last night’s debate. They voted those things down probably without even realising some of the things on which we were voting.

I am sure there will be some students out there who thank their lucky stars that the threshold at which they begin to repay their debts has increased slightly, but when they look at the amount they are repaying they will not be thanking anyone. We will leave the electoral and political consequences of this deal for debate on another day. Senator Murphy says he expects some criticism. That is the worst thing that could happen to people in this place—criticism and maybe losing their seat—but the worst thing that could happen to the next generation and beyond is that they will be locked out of higher education. I know that we deal with facts and figures, but that is the reality and it is the reality that we lost in the debate last night. It will affect people’s futures; it will affect their decisions. We know that education and access to it affects your income-earning potential and affects your housing and your lifestyle—all of those issues are affected by it. Education is about empowerment as well as an enlightened and democratic nation. We closed the door on that last night. I ask these senators with these indulgent self-justifications about why we had to do a deal, how it is not perfect and how it is 85 per cent of what they wanted: why didn’t you say no? Go back to the drawing board and bring it back next year, because 2004 funding was in there—and people know it. In fact, there was $117 million more funding under the Higher Education Funding Act than the Higher Education Support Bill. But, no, it was the glory of the deal making and the pressure of the
government. Whether it is the threat of an election or not, I do not know, but I hope it was worth it.

For my home state of South Australia it is not worth it—not for a multicampus institution like the University of South Australia and not even for my alma mater, the University of Adelaide, who are worried about the loss of places and whether those overload places are going to be factored into the mix.

The vice-chancellors I have spoken to—and those senators who have only just met vice-chancellors in the context of liaising with them for this debate can believe me when I say this—have been very up-front with us. Senator Carr and Senator Nettle know that. The vice-chancellors are worried because we did not completely sever that link between conditional funding and the CGS. They are worried because they do not want to lock students out. They are worried because they think this is their only shot at getting additional funding.

‘Additional’ funding! It is back-ended. Most of it kicks in in 2007. Most of it replaces the $1 billion in real terms that has been cut out since 1996 by this government. And people have fallen for it. I know my views, as I was reminded through the debate last night, may be considered old-fashioned and that my experience of university life may be too recent—although, Senator Nettle, I think your experience is much more recent, from what you were telling me last night. I think they passed the last package on the day you graduated. I may be swayed by all those romantic notions of what a university means and its importance.

Senator Carr—And should be.

Senator STOTT DESPOJA—Thank you, Senator Carr. We will continue to console each other. At the end of the day, students are big losers in this package. I think the future students are big losers—those aspiring students, those kids in year 12, those in single parent families, kids in one-income families and parents who will not make the decision to go back and retrain, upgrade and upskill. Do not let me forget the student learning entitlement. It was increased from five to seven years. But what an administrative mess; what a joke. It is another revenue-raising measure disguised as some kind of goodwill from the government.

I say that the Australian people have every entitlement to access education. That is why I pay taxes. That is why I ran for parliament. I ran for parliament to try and make a difference to publicly funded and accessible education. Yes, I might feel today that I have failed. But I know that in the last eight years and before that, I and the party—and Senator Cherry referred to the Democrats’ record—have done a lot to ensure that kids from poorer backgrounds get better Austudy. You name it, we have been working on it. But today I feel like the door closed. It closed on poor kids and middle-income families. Once and for all we made it very clear that we believe education is a commodity. The Parliament of Australia believes people should pay for their education, get their professional degrees and qualifications ASAP and pay it back—preferably more, so that the government can make a bit of an increase on its return. Remember, the economic benefit to government of higher education is about 11 per cent. We are treating it as a commodity. Students are on the conveyor belt.

We have signed off on that today. The people who signed off on it are the very people who have purported to have a whole range of commitments to access and equity. I know people who previously ran for my party, including in the 1998 federal election, who ran on a platform of commitment to publicly funded, accessible education and training. That ideal was betrayed last night. It has been entrenched and it is going to be
really hard to go back. I hope the Labor Party will do something about this, because we are going to tackle the Labor Party in the same way that we have tackled this government. I hope we have a bit more success, because today is a very sad day.

Senator HARRADINE (Tasmania) (12.48 p.m.)—There has been a lot said today, yesterday and a few days previously on the Higher Education Support Bill 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003. Some have been reflecting on the motivation of the four Independents and their support of the government’s heavily amended higher education package. We have all approached this legislation—and I am sure I speak for my colleagues as well—wanting the best for the entire higher education sector. I had a number of choices with this legislation. The easiest one was to oppose it outright. The bills would have been defeated, and it is likely that for another couple of years or even more nothing would have happened to address the problems of higher education. The assertion somebody made last night that ‘we could do without this funding and live until 2007’ is laughable. My second choice could have been to support the government legislation without amendments. That would have been unwise as the legislation obviously needed substantial amendment. The third choice I had was to try to amend the legislation, to try to improve the bill and to make it more acceptable. Of course I took that option, as did my colleagues. That is the most difficult option to take.

Obviously I did not draft the original bill. I would have approached it differently if I had. But I do not have the power to draft government legislation. What I have in my possession as one of the Independent senators is a limited power to negotiate compromise. For my negotiation to be of any value, and to pass the bill, I also needed to have general agreement with my three colleagues, who each had their particular part to play and their own strengths. I acknowledge their tremendous work under pressure during these last few weeks. By negotiating with the government my three colleagues and I have had the opportunity to improve a range of benefits for students and the higher education sector whilst minimising the negatives.

Let us not forget that this legislation will result in $2.4 billion for the higher education sector. It would of course have been better to have had more; that goes without saying. But the government was not willing to provide more funding for the higher education sector. This is what the Independents were able to achieve in negotiation with the government. It is more than was on offer before we started our negotiations, and $2.4 billion more than if the bill had been rejected by the Senate. If the bill had been rejected, that amount of $2.4 billion would not be flowing to the sector, nor would the additional amounts that our negotiations resulted in. We could have been churlish and demanded that the government agree to every one of our concerns. But taking a mature approach we raised a number of key points of concern and we negotiated outcomes on these concerns. The government has agreed to increase the threshold at which payments are made.

Senator Cherry today and Senator Stott Despoja last night in their statements ignored the fact that in 1996, if I had not taken the action that I did, the legislation—which did have certain benefits—would have failed. I know this was probably an oversight, but no acknowledgement was given to the fact that I was able to move amendments to that legislation which protected those graduates who
had poorer families. The amendment actually lifted the repayment thresholds substantially for families. After some rather interesting negotiations at that time, it was adopted by the parliament. I would suggest that, when discussing these matters, that ought to be taken into consideration. It is easy after the event to say certain things. I do not want to carry on: I just refer anybody who is interested to page 6680 of the Senate Hansard of 4 December 1996.

Senator Cherry suggested yesterday that not all of the senators were committed to vote against the government’s AWA proposal. Senator Cherry must have been given the wrong information. Although he is not in his place, I acknowledge his nod. We were quite firm on that, and I have been quite firm on it for quite a while. In fact, a letter that I wrote to the minister some time around 28 November in which I made that quite clear is on the record. The ultimate wording that is in the legislation was written by me.

I say through you, Mr Acting Deputy President, to Senator Stott Despoja that there are at least a couple of us who have had a fair degree of experience in the area of industrial relations. I pay tribute to my other Tasmanian colleague Senator Murphy for his negotiations in regard to that and also to my other colleagues. I thank those people who have written to me. It is difficult for an Independent to respond to all of them, but they can bear in mind that we always take note of what people have written to us. I am grateful for the help and advice that people have given to us on this matter. I seek leave to incorporate the rest of my speech in Hansard.

Leave granted.

The remainder of the speech read as follows—

The Government has agreed to:

Increase the threshold at which students have to start repaying HECS from the AVCC-negotiated $33,150 in 2005-06 prices to $35,000 in 2004-05 prices ($36,184 in 2005-06). In addition, the new threshold will come into force one year earlier, in 2004-05. The threshold is currently $24,365. I wanted the threshold to go up to average weekly earnings, which is about $37,000, but our negotiations came up just short of that. Senators will recall that when HECS was originally introduced, the repayment threshold was set at average weekly earnings.

Remove the interest rate charge from FEE-HELP for postgraduate students. This means that the current Postgraduate Education Loans Scheme or PELS is basically maintained without the extra 3.5 per cent real interest rate that the Government originally proposed;

Reduce the undergraduate FEE-HELP real interest rate from 3.5 per cent over ten years to an effective rate of 1.8 per cent over ten years. The 1.8 per cent interest rate will be achieved by charging students a one-off 20 per cent administration fee rolled into the loan. This is a more progressive approach to charging interest, which will advantage those least able to manage fast repayment.

The availability of FEE-HELP is significant as it enables all Australians to access a full fee place at a university. Currently students have to either be relatively well off or to make considerable sacrifices to afford a place. We should not forget that many very-well qualified students miss out on a place in their preferred degree each year and this offers the opportunity for them to access a non-HECS place.

One other important effect is to allow students at a number of reputable private higher education providers to access student loans. Previously they have had the very difficult and expensive task of funding themselves through teaching, nursing, theology or other courses;

Cut the maximum increase in HECS charges from 30 per cent to 25 per cent. This cut recognises that studies show students are not in general deterred from attending university by HECS charges, but that there should be an equitable limit to the financial contribution we expect students and their families to make. As I have already said to the
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Senator NETTLE (New South Wales) (12.58 p.m.)—It has been a long journey for those of us who have been participating in this higher education process from the outset. At the end of the long journey last night, we came to a fork in the road. Senators had a choice: to take the government direction and head us towards a deregulated, privatised higher education system or to take the other direction and retain a system that is predominantly public and hold out the hope that this system will be built on to guarantee an egalitarian level of access and quality, retaining the Australian ethos of a fair go. The majority of senators last night decided to take the wrong fork. They decided to go back on that Australian fair go ethos and create what amounts to—as others have said—a very dark day for the future of higher education in Australia.

Those of us who sat in the chamber and watched on in horror as the government’s deal unfolded were left to wonder why. We were left asking why the government and the four Independent senators thought it was a
good idea to hit already struggling students with a massive half a billion dollar increase in student fees through HECS each year. We were left asking why they thought it was a good idea to limit access to public higher education to just seven years. We were left asking why they thought it was a good idea to allow universities to be able to charge more domestic students up-front full fees. We were left wondering what the benefit is to our country of allowing the minister to water down this sector by making public universities compete with the private providers, starving public universities of funds and subsidising the private providers, who do not offer a comprehensive university education experience. We were left last night asking why, and we continue to ask why, we should preside over cuts to funding to the University of Western Sydney, a university that serves 10 per cent of the Australian population, many of whom are from a low socioeconomic background. Why should the Senate support a package when staff jobs will be lost and courses and campuses will close?

Why has all this happened? I think some of the blame needs to lie with the vice-chancellors because we heard the Independents saying last night that the universities have signed off on the package, the universities have agreed to this deal. The implication from that is that the Australian Vice-Chancellors Committee represent universities. They do not. They do not represent the students, they do not represent the staff, they do not represent the parents and they do not represent the alumni and the friends of the university. To suggest that the Australian Vice-Chancellors Committee represent universities is like saying the Australian Chamber of Commerce and Industry represent Australian workers. It is like saying the CEOs represent their staff. The vice-chancellors are the CEOs of Australian universities. If people do not agree with me, they can check out the government’s governance guidelines that we have just passed into law which confirm that title.

The interests of vice-chancellors are the same as CEOs of corporations; they are seeking to increase the opportunity for their university to grow and, where possible, to bring in profits. That is the role vice-chancellors are playing. They are not representing the higher education sector in this country. Yet they have been part of, with the Independent senators and the government, precipitating a deal that ensures better cash flow to their institution at the expense of the character of an egalitarian and accessible higher education system. They could have and should have held out for a better deal. Instead, students have lost out and in some cases whole communities have lost out. The Greens are absolutely appalled with this outcome.

The second point to note is that the Australian Vice-Chancellors Committee does not even represent the views of all vice-chancellors. It certainly has not represented the views of Janice Reid, the Vice-Chancellor of the University of Western Sydney. She at least was prepared to stand up and defend her community and call for the legislation to be opposed. The repercussions for that region will be long and painful. Our office received a call from her last night reminding us that the government members in that area will surely live to regret the tragedy that will come in the next election as they have failed to represent marginal electorates around the University of Western Sydney.

Ultimately, the blame for this deregulation of the higher education sector—for taking us down the wrong path, for taking us down a path where students pay—lies at the feet of this government, the architects of these bills. They set out to introduce a formula that allows the vice-chancellors to access the soft funding option of students and their parents
via a deregulated fee regime. They have done that in order to relieve the Treasurer of responsibility for finding the much-needed growth funds from our budgets for universities. They have achieved that by starving universities into submission—there have been over seven years of underfunding—so the vice-chancellors have been practically begging for this package to be passed.

The Greens condemn in the strongest terms this sorry piece of legislation. Education is the foundation stone of our civil society. The role of public education in making our society a harmonious and vibrant place is absolutely central. The role of universities in that public system is significant and will only get more so. This government, not content with undermining, by encouraging a two-tiered private and public school system, the ability of our public schools to deliver the mission of social inclusion and empowerment, has turned its attention to our higher education sector. The outcome will be similar: the introduction of a two-tiered system in which the rich and the lucky have access to the richest and the most successful institutions, institutions which will attract a premium for their graduates. These institutions will be in the bigger metropolitan centres. They will not be accessible to people from outer metropolitan areas; they will not be very accessible in the regions and certainly not be accessible to rural Australians.

These institutions will offer the most comprehensive of educational experiences. Maybe Minister Nelson will get one of his universities he considers to be the best in the world, but the cost will be to the rest of the sector, which is going to be forced into second- and third-class arrangements and whose students will not enjoy the same quality education experience and whose graduates will not enjoy the same status as graduates from these top metropolitan universities. This is a return to elitism in our higher education system, and it stinks.

The Greens believe a responsible government should foster a strong, vibrant, top-quality public education system that is fee free from preschool to university. That is the kind of vision that the Greens bring to the debate. It is an affordable vision and it is a responsible vision. For less money than this government spends each year on the diesel fuel rebate the government could make this a reality. For less money than the $4-a-week tax cut in the last budget the government could choose to make this happen. But the government refuses to invest real money in the higher education sector. Instead, it comes up with this betrayal of the sector and expects us to be grateful. The Greens oppose these bills, we oppose the attack on our comprehensive public university system and we oppose this retreat from a fair go. We hope that all other senators will do likewise.

Question put:

That these bills be now read a third time.

The Senate divided. [1.12 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 31
Noes............ 29
Majority........ 2

AYES

Abetz, E. Barnett, G.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Campbell, I.G.
Chapman, H.G.P. Colbeck, R.
Eggleston, A.* Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Harradine, B. Heffernan, W.
Humphries, G. Johnston, D.
TRADE PRACTICES LEGISLATION AMENDMENT BILL 2003

Consideration of House of Representatives Message

Consideration resumed from 3 December.

Senator ABETZ (Tasmania—Special Minister of State) (1.16 p.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator CONROY (Victoria) (1.16 p.m.)—Labor will insist on the amendments made by this chamber to the Trade Practices Legislation Amendment Bill 2003. We want to reaffirm our view that the ACCC is the appropriate body to conduct price inquiries under the Trade Practices Act. I see a number of Democrats in the chamber still. I urge them to reconsider their position on this. They are privatising the role of prices surveillance.

The government’s bill contains no mechanism allowing the parliament to ensure that a body chosen by the minister would be up to the task. The amendment proposed by the government, which I understand will be accepted by the Democrats, does not address either of these key issues; it simply requires the minister to tell the parliament what he has done after the event. The parliament will have no recourse if it disagrees with the reasons provided by the minister for appointing another body to conduct a price inquiry. This is just another opportunity to feed a few mouths of the government’s mates.

I can foresee the government’s favourite economist, Chris Murphy of Econtech, being hired to do prices surveillance work. I can see Access Economics being picked up to do prices surveillance work. This is a joke. I cannot believe the government are agreeing to this. But worse, I cannot believe the Democrats are agreeing to this. Labor do not believe that the prices inquiry function of the
ACCC should be privatised. We are, therefore, insisting on our amendments. We urge the Democrats to reconsider this ludicrous proposition that they voting for.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (1.19 p.m.)—I move government amendment (1) on sheet PF237:

(1) Schedule 2, item 40, page 18 (after line 13), after subsection 95H(5), insert:

(5A) The Minister must, as soon as practicable after confirmation that the other body will hold the inquiry, table a statement in each House of the Parliament:

(a) specifying that the body will hold the inquiry; and

(b) giving the Minister’s reasons for requesting the body, rather than the Commission, to hold the inquiry.

Senator CONROY (Victoria) (1.19 p.m.)—Labor oppose this amendment. It is not even remotely in the spirit of what the Democrats have traditionally stood for. It is not even remotely in the spirit of ours. I urge the Democrats to reconsider their position on this bill.

Question agreed to.

Resolutions reported; report adopted.

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

Consideration resumed.

In Committee

Bill—by leave—taken as a whole.

Senator NETTLE (New South Wales) (1.22 p.m.)—by leave—I will move all of the amendments on Australian Greens sheet 3246 together and speak to all of them now. I move:

(1) Clause 2, page 2 (table item 3), omit the table item, substitute:

3. Schedule 2, items 1 to 3
   A day or days to be fixed by Proclamation, subject to subsection (3)

3A. Schedule 2, item 3A
   The day after the day on which the Victorian Referral Act reviews the Royal Assent
   (however described)

3B. Schedule 2, item 4
   A day or days to be fixed by proclamation subject to subsection (3)

(2) Clause 2, page 2 (after line 13), after subclause (3), insert:

(4) In this section, Victorian Referral Act means an Act of Victoria that refers to the Commonwealth Parliament power to legislate with respect to contract outworkers.

(3) Schedule 2, item 3, page 18 (lines 17 to 22), omit section 537, substitute:

537 Object of Part

The object of this Part is to ensure that an individual who is an outworker other than an employee performing work in Victoria in the textile, clothing or footwear industry receives the same protections afforded to employees under Part XV.

(4) Schedule 2, item 3, page 18 (line 25) to page 19 (line 2), omit the definition of contract outworker, substitute:

contract outworker means an individual:

(a) who is a party to a contract for services; and

(b) who performs work under the contract for another party or parties to the contract, where that work:

(i) is performed in Victoria; and

(ii) the work comprises packing, processing or otherwise working on articles or materials for the textile, clothing or footwear industry; and
(iii) the work is performed in or about:

(A) private residential premises; or
(B) premises that are not business or commercial premises of anyone who is obliged under the contract to pay for the work performed.

(5) Schedule 2, item 3, page 19 (lines 3 to 5), omit the definition of court of competent jurisdiction.

(6) Schedule 2, item 3, page 19 (after line 6), at the end of Division 1, add:

538A Contract outworkers are employees for the purpose of this Act

For the purposes of this Act:

(a) a contract outworker is an employee;
(b) a person who engages a contract outworker is an employer;
(c) the contract between a contract outworker and a person who engages him or her is a contract of employment;
(d) the conditions on or under which a contract outworker performs work are conditions of employment;
(e) the relationship between a contract outworker and a person who engages him or her is an employment relationship.

(7) Schedule 2, item 3, page 19 (after line 21), at the end of Subdivision A, add:

540A Concurrent operation of Victorian laws

(1) This Part is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Part.

(2) For the avoidance of doubt the provisions of this Part are not intended to be exclusive of contract outworkers’ rights or entitlements with respect to remuneration, leave and other aspects of employment to the extent that they are provided for in Victorian legislation capable of operating concurrently with this Part.

(9) Schedule 2, page 27 (after line 16), after item 3, insert:

3A At the end of section 540A

Add:

(3) This Part will apply in circumstances to which sections 539 and 540 do not apply if and when the Victorian Parliament passes a law referring to the Commonwealth Parliament power to legislate with respect to contract outworkers.

We oppose schedule 2 in the following terms:

(8) Schedule 2, item 3, page 19 (line 22) to page 27 (line 16), Subdivisions B to D, TO BE OPPOSED.

I want to comment on the single paragraph that the minister read out from a letter that Minister Andrews, on a call from our office, would not make available to the Greens. I would appreciate it if the minister tabled or incorporated that letter here in the committee stage. It is not a letter that we have seen all of yet; we have just heard the single paragraph that the minister read out in the second reading debate on this legislation. On the basis of a single paragraph, the chamber is supposed to accept that the arrangements—

Senator Abetz—Wasn’t it a full page?

Senator NETTLE—Minister, while you were talking I was saying that you read out a single paragraph. Our office contacted Minister Andrews’s office to ask for a copy of the letter. We do not have a copy of the letter, but if you would like to table a copy of that letter that would be appreciated. You read out a paragraph from the letter in your speech in the second reading debate.

Senator Abetz—Which letter?

Senator NETTLE—The one from Minister Andrews.
Senator Abetz—I am happy to table that. But I should consult with the advisers.

Senator Nettle—That would be great. On the basis of the letter that we will see shortly, the chamber is supposed to accept that the arrangements that the federal and Victorian governments have entered into will not prevent the Victorian government improving protections for TCF outworkers. The letter confirms to us that TCF outworkers are not adequately protected by the deal and the bill before us. It reaffirms our view that the Green amendments are needed. We can deal with that problem right here and now. The chamber can guarantee a better deal for tens of thousands of workers who are amongst the lowest paid and most poorly treated workers in the country. The Green amendments will do that. But the federal government appears set on turning its back on these people. We hope that Labor, the Democrats and the Independents will not be a part of this action. We hope people will not say, ‘Oh well, we will wait and hope that the Victorian government addresses the problem.’ This is the problem it failed to address in its negotiations with the federal government.

How much longer do Victorian TCF outworkers have to wait to be protected from exploitation? Everyone, even the federal government in its explanatory memorandum to the bill, recognises that these workers are poorly treated and need protection. But the federal government is not prepared to guarantee that in this bill by ending the legal fiction that most TCF outworkers are contractors. Why? I suspect it does not care about working people. It certainly fits with the rest of its industrial relations agenda: not seeming to care about exploitation that its very own policies have made possible, not seeming to care about the harsh reality of the mantra of its workplace flexibility in choice, not seeming to care that there are millions of Australians who do not have the kind of individual bargaining power that exists in the fantasy world of the Howard government’s industrial relations dreamland.

Senator Abetz in his speech in the second reading debate accused the Greens of engaging in class warfare. We are proud to stand up for the rights of working people in this country and we are proud to stand up for the rights of TCF outworkers in Victoria who day in, day out struggle for decent pay and decent conditions. These workers have the same dreams and aspirations as most of us: a secure home, a good education for their children, a little bit of money to set aside for holidays and emergencies. These are modest desires. Yet the government is prepared to stand by and effectively endorse rampant exploitation of those people that denies them these attainments, and it has made it possible by maintaining the legal fiction that most TCF outworkers are contractors.

The government, in telling the chamber that the Greens’ amendments are not necessary, also seems to have overlooked a fundamental shortcoming in relying on the Victorian government to solve the problem. The whole point of this bill, we have been told, is to create a unitary industrial law system. The federal government did not want the Victorian government to introduce legislation to deal with the shortcomings of the original referral under the Kennett government in 1996. This bill is an attempt to address those shortcomings whilst avoiding the need for state legislation. Yet the government is telling us that in the case of TCF outworkers state legislation can look after the problem. So we face a situation where state legislation is required to deal with a problem that the federal government and the Victorian government have failed to address but could
have addressed in the deal that created this legislation. This will create a dual regulation of one set of workers, if indeed the Victorian government bothers to take up the issue. This is precisely what the federal government is telling us it does not want. While we wait for the Victorian government to do something about the problem of TCF outworkers because the federal government does not want to, businesses that provide award wages and conditions and do the right thing by TCF employees will continue to face competition from unscrupulous businesspeople who are complicit in this shameless exploitation of TCF outworkers. This is unfair to employers who do the right thing and it can put in jeopardy these legitimate operations.

The Australian Greens’ amendments are needed to protect some of the most exploited workers in the country. These amendments allow the chamber to deal with the problem right now, once and for all, and there is no justification for delaying. I could go through and describe the detail of each of the amendments, but I suspect that people’s contributions will be on the whole issue rather than the specific amendments, so I might see if people are happy to continue in that way.

Senator Jacinta Collins (Victoria)
(1.28 p.m.)—I am very happy to deal with all of the amendments together and I think that the contribution Senator Nettle made during the second reading debate about the nature of the amendments was quite adequate. In fact, the detail of the amendments I find relatively familiar. So that will not be an issue, I believe. The issue about dealing with these concerns regarding outworkers, as you highlighted in your speech in the second reading debate, Senator Nettle, has quite a lot of sympathy. Senator Murray and I are very familiar with the reports that you referred to, the outworkers report of 1996 and the outworkers report of 1998. I think that at the time I was chair of the committee that made those reports and I am very familiar with the recommendations. However, as I highlighted in my contribution in the second reading debate, this is about re-establishing award coverage for Victorian workers. Certainly there are many issues associated with outworkers that have not been adequately dealt with in the past in many different jurisdictions. There are limitations in the outwork provisions, even those that the Victorian government has been able to establish but is yet to proclaim and those that exist in New South Wales as well. A detailed examination of those reports will highlight the remaining difficulties.

I would like nothing better than to be in government myself and be in a position to adequately resolve those issues about outworkers. Unfortunately, at this point in time, an ambition of having outworkers deemed to be employees in the federal jurisdiction is beyond our scope. This is not through a want of will from the Labor Party but rather, as you described, a position taken by the Commonwealth government. As I said, this project was commenced and launched as a project to re-establish award coverage for Victorian workers, and the Victorian government has achieved that much. I look forward to a time when any extra claims with regard to improving circumstances for outworkers can be addressed as well. But I am not prepared—and the Labor Party is not prepared—to contemplate compromising this arrangement, and therefore preventing award coverage for Victorian workers coming into effect as soon as possible, in order to resolve further issues which we know the government will not accept. Unfortunately, whilst Labor has much sympathy—as you have highlighted from previous Senate committee reports—with what the Greens are hoping to achieve with these amendments, we are concerned to ensure that Victorian outworkers are afforded maximum possible protection.
and that Victorian laws relating to out-workers are given their fullest operation. We believe that the bill as amended to include the new section 540A does achieve this aim.

We are also concerned to ensure that the bill passes the parliament, as I have said, as a matter of urgency to assist the hundreds of thousands of Victorian workers who have minimal or no award protection. For these reasons, we will not support the amendments proposed by the Greens. However, I also want to take the chamber and the Australian Greens, particularly Senator Nettle, to a couple of sections of the government’s second reading speech on this bill. In the middle paragraph on page 2 of the second reading speech, the government clearly says:

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

In case anyone has additional concerns about the TCF industry, let me go to the third last paragraph of the second reading speech, which says:

The Bill would introduce a requirement that contract outworkers in the TCF industry in Victoria receive at least the minimum Schedule 1A rate of pay applicable to employed TCF outworkers, or the minimum rate payable under a relevant common rule award, whichever is the higher.

And yes, Senator Nettle, this does reinforce the two standards which you are concerned about, but the problems are not just in Victoria—and this is why I characterise this as an extra claim on a project to achieve award coverage for Victorian workers. These are problems for outworkers across the nation. And, again—I see Senator Murray nodding too—we would both like to resolve those issues, but the scope to do that with this immediate project, in light of the government’s intention, is obviously very limited. But let me stress the final point in this paragraph of the government’s second reading speech:

This entitlement to a minimum rate of pay will not—and I stress that it will not—restrict the ability of the Victorian Parliament to implement its own initiatives through Victorian legislation capable of concurrent operation.

If Victoria continues to have concerns about how current provisions may operate concurrently, it is still within its power to rectify any problems. Any achievement beyond that would of course deal with TCF issues across the board, and we continue to have ambition to go down that path. Unfortunately, this matter relating to Victorian awards does not provide the opportunity to further those aims. For those reasons, whilst we support their objectives, on this occasion Labor cannot support the Greens amendments.

**Senator MARSHALL (Victoria) (1.34 p.m.)**—I want to address one of the things Senator Abetz said in his speech in the second reading debate. He said one of the reasons why this legislation will not deal with the deeming provisions of contract out-workers to be employees is that they wanted to offer real choice to those people—the choice to be contractors or not. Let me make it very clear. We are talking about one of the most exploited groups of people in our community. These people do not choose to be contractors. These are not mums and dads with dreams of being small business people. These people are contractors because those who provide them with work want them to be contractors so that they do not have the ability to claim workers compensation or superannuation, or to pursue their entitle-
ments. They have no legal ability to pursue people for underpayment. They want them to be contractors so they can provide their own workplace at no cost to the employer. They want them to provide their own electricity and their own machinery and be responsible for the maintenance of that machinery for these employers. There is not a single outworker who is presently deemed to be a contractor who is one by choice.

I think that is an important point that the government has neglected. These are people that all the studies show earn from 20c an hour up to a maximum of $10 an hour, with no conditions, no protection and no other entitlements whatsoever. I think it is an appalling argument for the government to say they will not deem contract outworkers to be employees because of choice. It is a ridiculous argument. Labor has been convinced that the operation of the Victorian legislation can act concurrently on the basis of section 540A, which states:

... this section is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this section.

I think I recall Senator Abetz saying yesterday that he was a humble suburban lawyer, and he may have a better understanding of what that clause actually means. For me to understand it I will need to pose a question to the minister, which I would require an answer to. Minister, is it the intention of this legislation to override any Victorian legislation that provides outworkers, who may be contract outworkers, with rights such as enforcement and recovery of entitlements? In particular, is it the intention of this legislation to override, directly or indirectly, persons who would otherwise have benefits under the Victorian Outworkers (Improved Protection) Act 2003?

Senator Ian Campbell—No.

Senator MURRAY (Western Australia) (1.38 p.m.)—This is an important matter which needs to be dealt with on the record. The first thing I will say is that Senator Collins’s remarks have been very helpful to the debate on this matter—if I may give her that compliment. The second thing is that the Democrats have been at pains to establish the precise nature and consequence of the arrangements, which are explicit in the bill and may also be regarded as implicit. We have deliberately taken advice from the Victorian Labor government on this matter. Our summary of the outworkers’ position is as follows.

The Outworkers (Improved Protection) Act was passed in Victoria in May 2003 and implemented on 1 November 2003. It gives outworkers the same rights as employees, rather than those rights that contractors enjoy, in core areas such as occupational health and safety, and long service leave. Part XVI of the bill provides for a minimum rate of pay for contract outworkers. New section 493A of the bill provides for common rules in relation to Victoria, which provides all employees in Victoria with access to the federal award safety net. New section 540A of the bill provides concurrent operation of Victorian laws. It states:

Section 152(1) of the Workplace Relations Act says that where a provision in an award deals with a matter, a state law dealing with the same matter is invalid. However, and very importantly, the common rule amendments in the bill will change this situation. If the FCT award is made a common rule, section 493A of the bill provides for common rules in relation to Victoria, which provides all employees in Victoria with access to the federal award safety net. New section 540A of the bill provides concurrent operation of Victorian laws. It states:

This Part is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Part.

Section 152(1) of the Workplace Relations Act says that where a provision in an award deals with a matter, a state law dealing with the same matter is invalid. However, and very importantly, the common rule amendments in the bill will change this situation. If the FCT award is made a common rule, section 152(1) will not apply because of section 493A and Victorian law relating to outworkers will be valid so long as it is not directly inconsistent. So, if you are an employee outworker in Victoria, you will be
covered by a federal award thanks to section 493A; and, if you are a contract outworker in Victoria, you will be covered by the Victorian Outworkers (Improved Protection) Act, thanks to section 540A.

I should make it clear that we think the intent of the Greens’ amendments is admirable. I will also make it clear that I have not looked at every clause and phrase, as you would understand; but I do think the intent is admirable. I make the point to the government that, if you do not deal with the outworkers issue on a national basis, you will have six different states producing laws. What is the point of that? If you believe in a unitary and consistent system, for goodness sake get a single policy to resolve this matter.

The last thing I will say on this bill is that the Democrats and I, having waited seven years for this glorious day—and it is a glorious day, because this bill benefits hundreds of thousands of Victorian workers—will not do anything to impede the passage of this bill. Therefore, I regret that we cannot support Senator Nettle’s amendments at this time, but we do support the intent.

Senator NETTLE (New South Wales) (1.41 p.m.)—I thank the parties for their contributions, and I expect that we will get a contribution from the government as well. Senator Abetz said that he would be tabling the letter. No doubt it has not been tabled yet. It would be good to get that letter tabled before we rise for the day. I am loath to leave it to asking his office for it, because that did not work last time. If we could get it tabled, that would be good.

I understand people’s comments about the improvements that are in this bill for Victorian workers—that is the reason the Australian Greens will be supporting this bill. With this series of amendments we have sought to improve the conditions of a particular lot of workers, TCF outworkers. We do not believe their situation has been adequately addressed. We do not want to have the distinction between employees and contract outworkers and we do not want to have to wait for the Victorian government to introduce legislation for that to work with this legislation—we have the opportunity here.

I acknowledge that this legislation will not improve conditions for outworkers across the board and across the country, but with this legislation we have the opportunity to improve the conditions for outworkers federally. Just because we cannot do it across the country is not a valid reason for not improving the situation for TCF outworkers in Victoria. Almost half TCF outworkers are based in Victoria, and today we have an opportunity to put forward improvements for these workers, who are so underprivileged. Everyone has acknowledged they are underprivileged. We do not just want them to have access to legislation which relates to their rate of pay; we want a whole range of their work and other entitlements to be covered in this situation as well.

I recognise that we do not have the support from other senators, and I recognise that people are supportive of our intent. That is why we have moved these amendments—it is an opportunity to improve the situation for those TCF outworkers. The Greens think it is disappointing that we cannot pick up on that particular situation now, but I can see the perspective of the different parties involved, so I am happy to proceed.

The TEMPORARY CHAIRMAN (Senator Kirk)—The question is that Greens amendments (1) to (7) and (9) be agreed to.

The committee divided. [1.48 p.m.]

(The Chairman—Senator J.J. Hogg)
Ayes...........  2
Noes...........  51
Majority........  49

AYES
Brown, B.J.  Nettle, K. *

NOES
ALLISON, L.F.  Barnett, G.
Bartlett, A.J.J.  Bishop, T.M.
Bolkus, N.  Boswell, R.L.D.
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.
Crossin, P.M.  Denman, K.J.
Eggleston, A.  Evans, C.V.
Ferguson, A.B.  Ferris, J.M.
Forshaw, M.G.  Greig, B.
Hogg, J.J.  Humphries, G.
Hutchins, S.P.  Johnston, D.
Kemp, C.R.  Kirk, L.
Lees, M.H.  Lightfoot, P.R.
Ludwig, J.W.  Lundy, K.A.
Mackay, S.M.  Marshall, G.
Mason, B.J.  McGauran, J.J.
Mclucas, J.E.  Minchin, N.H.
Murray, A.J.M.  O’Brien, K.W.K.
Payne, M.A.  Ray, R.F.
Ridgeway, A.D.  Scullion, N.G.
Stephens, U.  Tierney, J.W.
Watson, J.O.W.  Webber, R.
Wong, P.  

* denotes teller

Question negatived.

CHAIRMAN—The question is that item 3 of schedule 2 stand as printed.
Question agreed to.
Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (1.53 p.m.)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

FAMILY LAW AMENDMENT BILL 2003

In Committee

Consideration resumed from 2 December.
Bill—by leave—taken as a whole.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (1.54 p.m.)—I would like to table three supplementary explanatory memoranda relating to the government amendments to be moved to this bill. The memoranda were circulated in the chamber on 17 September, 15 October and 2 December this year. I seek leave to move amendments (1), (4) and (5) on sheet VW221 together.

Leave granted.

Senator IAN CAMPBELL—I move:

(1) Clause 2, page 2 (after table item 14), insert:

14A. Schedule 4A The day on which this Act receives the Royal Assent

(4) Page 33 (after line 6), after Schedule 4, insert:

Schedule 4A—Setting aside financial agreements

Part 1—Amendments

Family Law Act 1975

1 Subsection 4(1) (after paragraph (eaa) of the definition of matrimonial cause)

Insert:
(eab) third party proceedings (as defined in section 4A) to set aside a financial agreement; or

2 After section 4
Insert:

4A Third party proceedings to set aside financial agreement

(1) For the purposes of paragraph (eab) of the definition of matrimonial cause in subsection 4(1), third party proceedings means proceedings between:

(a) either or both of the parties to a financial agreement; and
(b) a creditor or a government body acting in the interests of a creditor; being proceedings for the setting aside of the financial agreement on the ground specified in paragraph 90K(1)(aa).

(2) In this section:

creditor means:

(a) a creditor of either of the parties to the financial agreement; or
(b) a person who, at the commencement of the proceedings, could reasonably have been foreseen by the court as being reasonably likely to become a creditor of either of the parties to the financial agreement.

government body means:

(a) the Commonwealth, a State or a Territory; or
(b) an official or authority of the Commonwealth, a State or a Territory.

3 After paragraph 90K(1)(a)
Insert:

(aa) either party to the agreement entered into the agreement:

(i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
(ii) with reckless disregard of the interests of a creditor or creditors of the party; or

4 After subsection 90K(1)
Insert:

(1A) For the purposes of paragraph (1)(aa), creditor, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

5 At the end of section 90K
Add:

(3) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.

(4) An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(5) If a party to proceedings under this section dies before the proceedings are completed:

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
(b) if the court is of the opinion:

(i) that it would have exercised its powers under this section if the deceased party had not died; and
(ii) that it is still appropriate to exercise those powers;

the court may make any order that it could have made under subsection (1) or (3); and

(c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(6) The court must not make an order under this section if the order would:

(a) result in the acquisition of property from a person otherwise than on just terms; and

(b) be invalid because of paragraph 51(xxxi) of the Constitution.

For this purpose, acquisition of property and just terms have the same meanings as in paragraph 51(xxxi) of the Constitution.

Part 2—Application of amendments

6 Application of amendments

The amendments made by this Schedule apply to financial agreements made at any time, whether before or after the commencement of this Schedule. However, the amendments do not apply to proceedings that were instituted before the commencement of this Schedule.

(5) Schedule 5, heading, page 34 (line 2), omit “Financial agreements”, substitute “Other amendments relating to financial agreements”.

Senator LUDWIG (Queensland) (1.55 p.m.)—The opposition will not oppose these amendments, which have been moved by the government in response to a recent Family Court judgment dismissing, for want of jurisdiction, an application by ASIC to set aside a family law financial agreement between Jodee Rich and Maxine Rich. Whilst that judgment was given on 15 October 2003, it is important to record that these amendments were not provided by the government to the opposition until some time after that. We know the government has been agonising about this issue for some time, but it certainly would have been of assistance if it had kept it a little bit closer to the particular bill itself. The government has obviously moved quickly on this issue of law reform, prompted by the One.Tel collapse, but it has not moved quickly on a range of other issues which we would have been far more pleased to see it move on. Australians were outraged by the bonuses and credits, and Senator Conroy has been able even today to talk about the inability of the government to come to grips with that. We are in a position where we will not oppose these amendments. Given the time of day, there is not much more we can really say.

It is probably worth mentioning that, as Justice O’Ryan said at paragraph 116 of that particular judgment—and I am just trying to summarise our position without taking up too much of the chamber’s time—there was prima facie evidence that the Riches had entered into a family law financial agreement purely to shield Mr Rich’s assets from creditors of One.Tel. However, the judge found that, under the Family Law Act, the court had no jurisdiction to set aside the agreement in the circumstances of that case. The judge went on to say at paragraph 118—and it is worth while taking the chamber to that, although I will not read it out in full—that, effectively, part 8A should be reviewed, at least in terms of its effect on the legitimate interests of third parties because the Family Law Act may be an instrument of harm to a third party. Thousands of Australians lost money in the One.Tel collapse. I doubt that even the Coen brothers could have dreamed up an as intolerably cruel scheme as the Riches did to place assets beyond the reach of One.Tel creditors. It is difficult to know how many other sham financial agreements there are out there, entered into by people...
with the same utter disregard as the Riches for their social and financial responsibilities.

These amendments will at least enable appropriate proceedings to be brought either by injured creditors or relevant government agencies to have them set aside. I will not detain the chamber any longer in respect of these amendments. As I have indicated, we do not oppose the amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.58 p.m.)—There is an aspect of this amendment that I have to bring to the attention of the chamber. In light of the issues raised by the case mentioned by Senator Ludwig, the Attorney-General has indicated that he intends to undertake a review of the provisions relating to binding financial agreements. The purpose of the review is to ascertain whether the original intention of the provision is being fulfilled. Of course, that is a worthwhile course of action. Senator Ludwig has outlined the basis for these amendments, and I will not take it any further than that other than to commend the amendments to the chamber.

Question agreed to.

Senator GREIG (Western Australia) (1.59 p.m.)—by leave—The Democrats oppose schedule 1 in the following terms:

(2) Schedule 1, item 1, page 5 (lines 6 and 7), TO BE OPPOSED.

(3) Schedule 1, item 2, page 5 (lines 8 and 9), TO BE OPPOSED.

(7) Schedule 1, item 8, page 7 (line 17) to page 8 (line 13), TO BE OPPOSED.

(8) Schedule 1, item 12, page 8 (lines 30 to 32), TO BE OPPOSED.

Can I also move amendments (4), (5) and (9) at the one time?

The TEMPORARY CHAIRMAN (Senator Kirk)—If you wish to.

Senator Ludwig—You probably could move (2) to (9) together.

The TEMPORARY CHAIRMAN—Senator Ludwig, I understand they are different types of amendments. Therefore (2), (3), (7) and (8) should be moved together.

Senator GREIG—I will speak briefly to amendments (2), (3), (7) and (8). These amendments relate to the objection of the Australian Democrats to the removal of the option to have a parenting plan registered in the Family Court. Under the current regime, it is possible for parents to enter into parenting plans and either treat these plans as informal arrangements or, alternatively, have them registered in a court so that they are legally binding. The bill proposes to remove that second option. The Democrats are of the view that this change would be contrary to the best interests of children in these situations.

A number of submissions to the inquiry into this bill by the Senate Legal and Constitutional Legislation Committee expressed significant concerns regarding this proposed change. For example, the Family Mediation Centre argued that providing an option of registering parenting plans gives separating families a greater degree of choice and a simpler, cheaper yet legally binding alternative for obtaining consent orders. The National Council of Single Mothers and their Children argued that unregistered parenting plans leave families more exposed to coercion and fraud and without any scrutiny of children’s interests. It also argued that a level of formality in registering parenting plans and the provisions assists determinations of changes of care patterns and reduces the risks of child abductions and trauma to parents.

We believe that the family law system in this country should, to the greatest possible
extent, provide separating families with a range of options for arranging their affairs following separation. Different circumstances apply to different families, and we should strive to ensure that our legal system is flexible enough to cater for those whilst maintaining its integrity. It is our view that the government has not put forward any strong, convincing reason why the option of registering parenting plans should be removed. Quite the contrary, there are persuasive arguments for maintaining this option, and this amendment seeks to achieve that.

Senator LUDWIG (Queensland) (2.03 p.m.)—As I have indicated in my speech during the second reading debate that the opposition does not oppose the repeal of the registration provisions governing parenting plans. I am not persuaded to change that position by what Senator Greig has said today. That is not to say that Senator Greig’s arguments do not have merit, but I am not persuaded at this time.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.03 p.m.)—For the record, the government opposes the amendments put forward by the Democrats. The government believes that we should change the system for registration of parenting plans. Consent orders are available to parents and the government believes that its course proposal is based on recommendations made by the Family Law Council and the National Alternative Dispute Resolution Advisory Council in March 2000 and also on earlier advice from the council given in January 1997. For those reasons the government opposes the amendments.

The TEMPORARY CHAIRMAN—The question is that schedule 1, items 1, 2, 8 and 12, stand as printed.

Question agreed to.

Senator GREIG (Western Australia) (2.04 p.m.)—by leave—I move:

(4) Schedule 1, item 3, page 5 (lines 23 to 26), omit the note.

(5) Schedule 1, item 4, page 5 (line 29) to page 6 (line 2), omit subsection (6), substitute:

(6) A registered parenting plan is a parenting plan that is registered in a court under section 63E and that has not been revoked pursuant to section 63H.

(9) Schedule 1, page 8 (after line 32), after item 12, insert:

12A After subsection 63H(2)

Insert:

(2A) To apply for registration of an agreement revoking a registered parenting plan (a revocation agreement):

(a) an application for registration of the revocation agreement must be lodged in accordance with the applicable Rules of Court; and

(b) the application must be accompanied by:

(i) a copy of the revocation agreement; and

(ii) the information required by the applicable Rules of Court; and

(iii) a statement in relation to each party, that the party has been provided with independent legal advice as to the meaning and effect of the revocation agreement and that is signed by the practitioner who provided that advice.

(2B) In determining whether it is appropriate to register the revocation agreement, the court:

(a) must have regard to the information accompanying the application for registration; and

(b) may, but is not required to, have regard to all or any of the matters set out in subsection 68F(2).

These amendments simply follow on as a consequence of the previous amendments. It
is apparent that they will not succeed, but the principle in this suite of amendments is the same as in the first suite.

Senator LUDWIG (Queensland) (2.05 p.m.)—I suspect that Senator Greig understands that we will not be supporting these amendments for the reasons given earlier.

Question negatived.

Senator GREIG (Western Australia) (2.05 p.m.)—The Democrats oppose item 6 in schedule 1 in the following terms:

(6) Schedule 1, item 6, page 6 (lines 10 to 22),

TO BE OPPOSED.

Democrat amendment (6) relates to the explanation of a parenting plan by a person who is assisting with or advising on the making of that plan. The bill aims to remove the current section 63DA and replace it with a new provision that provides for a number of matters which counsellors, mediators and legal practitioners must explain to parties when putting together a parenting plan. In particular, counsellors, mediators and legal practitioners will no longer be required to explain the obligations that the plan creates or the consequences of not complying with the plan.

These are important aspects of the parenting plan which should be explained to each of the parents regardless of whether the plan is registered or not. We should be seeking to ensure that parents have access to as much information and advice as possible when they are contemplating making a parenting plan so that they fully understand the implications of that. We Democrats find it hard to understand why the government would want to reduce the amount of information provided to parents in these circumstances and, in our view, there is no compelling reason or justification for doing so.

Senator LUDWIG (Queensland) (2.06 p.m.)—The opposition does not favour the amendment proposed by the Democrats. The Senate committee inquiry into this matter did not have any problem with the issue, and we are bound in this instance to be cognisant of that. We are also concerned that it might add to the confusion, and we do not think that is warranted. As I have said, the Senate committee found that it really did not have any issue in this area. Without delaying the matter any further, I think Senator Greig probably understands our position.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.07 p.m.)—For the reasons outlined by Senator Ludwig, the government also opposes the amendment.

The TEMPORARY CHAIRMAN—The question is that item 6 stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—The next question is that items 2 and 3 stand as printed. Senator Greig, you might wish to move your amendment (1) at the same time as amendments (10 and (11) and speak to that as well.

Senator GREIG (Western Australia) (2.08 p.m.)—Mr Temporary Chairman, I would like to withdraw amendments (10) and (11) and address only amendment (1).

The TEMPORARY CHAIRMAN—You do not have to withdraw them, Senator Greig, you just need to move amendment (1).

Senator GREIG—I move Democrat amendment (1):

(1) Clause 2, page 3 (cell at table item 15, column 2), omit the cell, substitute “The 28th day after the day on which this Act receives the Royal Assent”.

This amendment would remove the retrospective commencement of new provisions
dealing with financial agreements between the parties to a marriage. The bill will repeal current section 90F(1) and replace it with new subsections 90F(1) and 90F(1)(a). The effect of these provisions is that the court may make a maintenance order, despite the terms of any financial agreement, if at the time the agreement was made a party to the marriage was unable to support himself or herself without government income support. The Law Council wrote in its submission to the relevant Senate inquiry that these provisions are designed to guard against:

... sweetheart deals between parties that might impact on social security entitlements or other income tested allowances by maximising those allowances and minimising the maintenance obligations of a person who would otherwise have an obligation to contribute.

We Democrats support these amendments; however, we do not support their retrospective commencement. They are provisions that we believe will significantly impact on the rights and liabilities of separating couples. We have had a long and proud record of opposing retrospective legislation, other than in the most exceptional circumstances. As Justice Wilson said in the case of University of Wollongong v. Metwally:

Retrospective legislation ... will often be abhorrent to those who are concerned to maintain a just society governed by the rule of law.

Our approach to retrospectivity represents more than just a party tradition. There are strong and persuasive arguments against retrospective alteration of the rights and liabilities of individuals. We believe that individuals should have the benefit of certainty about the applicable law when they order their daily lives. In this case, we believe that parties who enter into a financial agreement should be certain of the law governing their agreement, as this may well affect the terms of the agreement. We concur with the Law Council of Australia when it argues that, although the proposed changes are meritorious, they should not commence retrospectively, because it is important to give effect to the intention of the parties when they entered into the financial agreement. For this reason, we propose that the retrospective commencement of these provisions in the bill be removed.

Senator LUDWIG (Queensland) (2.11 p.m.)—The opposition will not be supporting the amendment, for the reasons that I outlined in my second reading contribution. The opposition is satisfied that the retrospective commencement of these provisions is in fact appropriate. This will help minimise the disadvantage to those who have been left reliant on government income support because of inadequate provision for maintenance in a financial agreement. The Legal and Constitutional Legislation Committee did examine this issue extensively and, rather than go to it, for those who are interested it can be obtained on the web site. Page 21 deals with the issue of retrospectivity at 3.70. In the conclusion to the report, the committee did have a view, at 3.77, that supports the position that I have now adopted.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.12 p.m.)—For similar reasons, the government opposes the Democrat amendment. It believes that there are good grounds for retrospectivity. In fact, the retrospective application of this amendment is justified, given the potential savings in government income support that could result. The government’s intention has always been to ensure that financial agreements can be set aside by the court in circumstances where the consequence of the agreement is such that a party can only support themselves by relying on the public purse, notwithstanding that their spouse may well be able to make maintenance payments. In this particular instance, the retrospective
aspect is justified and the government opposes the amendment.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.13 p.m.)—by leave—I move government amendments (2) and (6) to (14):

(2) Clause 2, page 3 (cell at table item 18, 2nd column), omit the cell, substitute:

On the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.

(6) Schedule 6, item 1, page 37 (after line 17), at the end of Division 1, add:

**90ADA Other provisions of this Act not affected by this Part**

This Part does not affect the operation of any other provision of this Act.

Example: Paragraph 90AE(3)(e) and subsection 90AE(4) do not limit the operation of any other provisions of this Act that require or permit the court to take matters into account in making an order in proceedings under section 79.

(7) Schedule 6, item 1, page 38 (line 18), omit “order.”, substitute “order; and”.

(8) Schedule 6, item 1, page 38 (after line 18), at the end of subsection 90AE(3), add:

(d) the court is satisfied that, in all the circumstances, it is just and equitable to make the order; and

(e) the court is satisfied that the order takes into account the matters mentioned in subsection (4).

(9) Schedule 6, item 1, page 38 (after line 18), at the end of section 90AE, add:

(4) The matters are as follows:

(a) the taxation effect (if any) of the order on the parties to the marriage;

(b) the taxation effect (if any) of the order on the third party;

(c) the social security effect (if any) of the order on the parties to the marriage;

(d) the third party’s administrative costs in relation to the order;

(e) if the order concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made;

Note: See paragraph (3)(b) for requirements for making the order in these circumstances.

Example: The capacity of a party to the marriage to repay the debt would be affected by that party’s ability to repay the debt without undue hardship.

(f) the economic, legal or other capacity of the third party to comply with the order;

Example: The legal capacity of the third party to comply with the order could be affected by the terms of a trust deed. However, after taking the third party’s legal capacity into account, the court may make the order despite the terms of the trust deed. If the court does so, the order will have effect despite those terms (see section 90AC).

(g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters—those matters;

Note: See paragraph (3)(c) for the requirement to accord
(h) any other matter that the court considers relevant.

(10) Schedule 6, item 1, page 39 (line 11), omit “order or injunction.”, substitute “order or injunction; and”.

(11) Schedule 6, item 1, page 39 (after line 11), at the end of subsection 90AF(3), add:

(d) for an injunction or order under subsection 114(1)—the court is satisfied that, in all the circumstances, it is proper to make the order or grant the injunction; and

(e) for an injunction under subsection 114(3)—the court is satisfied that, in all the circumstances, it is just or convenient to grant the injunction; and

(f) the court is satisfied that the order or injunction takes into account the matters mentioned in subsection (4).

(12) Schedule 6, item 1, page 39 (before line 12), at the end of section 90AF, add:

(4) The matters are as follows:

(a) the taxation effect (if any) of the order or injunction on the parties to the marriage;

(b) the taxation effect (if any) of the order or injunction on the third party;

(c) the social security effect (if any) of the order or injunction on the parties to the marriage;

(d) the third party’s administrative costs in relation to the order or injunction;

(e) if the order or injunction concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made or the injunction is granted;

Note: See paragraph (3)(b) for requirements for making the order or granting the injunction in these circumstances.

(g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters—those matters;

Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

(h) any other matter that the court considers relevant.

(13) Schedule 6, item 1, page 39 (after line 29), at the end of Division 4, add:

90AJ Expenses of third party

(1) Subsection (2) applies if:

(a) the court has made an order or granted an injunction in accordance with this Part in relation to a marriage; and

Example: The capacity of a party to the marriage to repay the debt would be affected by that party’s ability to repay the debt without undue hardship.

(f) the economic, legal or other capacity of the third party to comply with the order or injunction;

Example: The legal capacity of the third party to comply with the order or injunction could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order or grant the injunction despite the terms of the trust deed. If the court does so, the order or injunction will have effect despite those terms (see section 90AC).

(g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters—those matters;
(b) a third party in relation to the marriage has incurred expense as a necessary result of the order or injunction.

(2) The court may make such order as it considers just for the payment of the reasonable expenses of the third party incurred as a necessary result of the order or injunction.

(3) In deciding whether to make an order under subsection (2), subject to what the court considers just, the court must take into account the principle that the parties to the marriage should bear the reasonable expenses of the third party equally.

(4) The regulations may provide, in situations where the court has not made an order under subsection (2):

(a) for the charging by the third party of reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of the order or injunction; and

(b) if such fees are charged—that each of the parties to the marriage is separately liable to pay the third party an amount equal to half of those fees; and

(c) for conferring jurisdiction on a particular court or courts in relation to the collection or recovery of such fees.

(14) Schedule 6, item 1, page 39 (after line 29), at the end of Division 4, add:

90AK Acquisition of property

(1) The court must not make an order or grant an injunction in accordance with this Part if the order or injunction would:

(a) result in the acquisition of property from a person otherwise than on just terms; and

(b) be invalid because of paragraph 51(xxxi) of the Constitution.

(2) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

These 10 amendments respond to recommendation 2 of the Senate Legal and Constitutional Legislation Committee report on the provisions of the bill tabled on 13 August 2003. These amendments are also the result of further consultations with the banking and financial sectors. The amendments are fairly straightforward and speak for themselves. Unless there are any questions, I commend the amendments to the Senate.

Senator LUDWIG (Queensland) (2.14 p.m.)—The opposition will not be opposing government amendments (2) and (6) to (14). The opposition supports the amendment which affects schedule 6 of the bill. Amendment (1) effectively postpones the commencement of this schedule for 12 months, in response to concerns expressed to the Senate Legal and Constitutional Affairs Legislation Committee. As the minister may know, I also serve on that committee, so I have some inside knowledge in respect of its workings. The Senate committee expressed a view that further work needs to be undertaken to ensure that compliance and other consequential issues are addressed. If the government does undertake the work, it might be more favourable to bring it back after that 12-month period. Hopefully, the government will be able to use that time in a worthwhile way.

Amendment (3) clarifies that the new provisions inserted by schedule 6 are not intended to disrupt the operation of existing provisions of the Family Law Act. Amendments (4), (5), (6), (7), (8) and (9) ensure that the court takes into account a range of addi-
tional matters before making an order, largely going to the effects of that order. Amendment (10) enables a third party to apply to the court for an order that the parties to the marriage bear the reasonable expenses incurred as a necessary result of complying with that order.

We note that the court is given broad discretion to make such orders as it considers just, having regard to the principle that such expenses could be borne equally by the parties to the marriage. Given the novelty of the powers, it is difficult to predict how this power will operate in actuality. However, we are confident that the court will carefully consider the circumstances of each case when exercising its broad discretion.

Amendment (10), as the Senate has considered, will also empower the Attorney-General to make regulations for the charging by the third party of fees to cover the reasonable expenses of third parties and for such fees to be borne equally by each party to the marriage. Again, we recognise that these are novel powers. We do not have an objection in principle to the mechanism proposed in the amendment. We note that these regulations, of course, will be disallowable, so when they are made we will have an opportunity to look at them once again. Of course, as always, the Senate—both through the committee and in the chamber itself—will take its time to examine those regulations, and the shadow minister will have an opportunity to look at those as they come through.

Amendment (11) clarifies that this power has effect subject to the constitutional protection against acquisition of property otherwise than on terms that are just. It is probably worth noting, with the new Legislative Instruments Bill now or soon to be law, that the regulations will have to comply with that. I will be looking with some interest at how the Attorney-General’s Department handle this new Legislative Instruments Act and how they set the example—and perhaps lead—in writing legislative instruments that can assist in setting the way for other departments as well. As we have indicated, these are important new powers that will hopefully help protect the welfare of both parties to a marriage, and it is important that they be implemented properly, with due consideration of compliance and consequential issues.

We are pleased that the Senate committee has prompted this response from the government. On that note, this instance provides a clear example of how a Senate committee can provide a positive contribution, in these circumstances, to improving a legislative process and ensuring—in our view and, I think, in the government’s view as well—that the final bill is far better than the initial version.

Senator GREIG (Western Australia) (2.18 p.m.)—The Democrats will not be opposing these amendments. Senator Ludwig has touched on each of them quite comprehensively and detailed what they relate to, and we would concur. We do, however, have some specific concern with government amendment (13). While not opposing it, we would like to place that concern on record. While we are prepared to support amendment (13), our concerns go to the heart of issues to look out for when scrutinising any regulations made under proposed section 90AJ. In considering this provision, we Democrats have consulted with the Family Law Section of the Law Council of Australia. It has expressed some concerns which we would like to bring to the government’s attention, because I understand that the government itself did not consult with the Law Council with regard to this particular provision.

There were two particular concerns raised. Firstly, while it appears that this provision is
directed at the recovery of expenses by financial institutions, there are a range of other third parties who may be able to take advantage of this provision. In particular, the Law Council has suggested that the vast majority of third parties affected by property settlements are individuals who are close to one of the parties to the marriage—for example, the new partner or family members of one of the parties. The Law Council foresees difficulties arising if such individuals, many of whom will be emotionally caught up in the separation of the parties to the marriage, are able to directly charge them for expenses without obtaining a court order. The Democrats recommend that any regulations made under this section clearly define which third parties they apply to and which they do not. In our view, the regulation should only permit the direct recovery of expenses by financial and similar organisations and not by third parties who have a close relationship to one of the parties to the marriage. We will closely scrutinise any regulations made by the government, particularly with that issue in mind.

The second concern raised by the Law Council was the potential for financial institutions to charge excessive fees under this provision. In particular, the Law Council pointed to the practice of some financial institutions in the context of superannuation legislation, which contains a similar provision. While many financial institutions were charging reasonable fees, it has emerged recently that some were charging up to $2,500 for a print-out of just a couple of pages involving no other new work. With this in mind, the Democrats recommend that any regulations made under section 90AJ(4) are drafted in specific terms and, where possible, set out reasonable fees for particular services. I ask the minister and the government to take these concerns into consideration, and I put the government on notice that we will be keeping an eye out for these issues when the regulations are tabled. Subject to those concerns, the Democrats support the amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.21 p.m.)—For the record, the government notes the concerns raised by Senator Greig and will take them on board.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.22 p.m.)—by leave—I move government amendments (3), (15) and (16) on sheet VW221:

(3) Clause 2, page 3 (table item 23, 1st column), omit “29”, substitute “29A”.

(15) Schedule 7, item 29, page 46 (lines 6 to 23), omit the item, substitute:

29 Subsection 117(2)
Omit “subsection (2A)”, substitute “subsections (2A), (4) and (5)”.

29A At the end of section 117
Add:

(3) To avoid doubt, in proceedings in which a child representative has been appointed, the court may make an order under subsection (2) as to costs or security for costs, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the child representative in respect of the proceedings.

(4) However, in proceedings in which a child representative has been appointed, if:

(a) a party to the proceedings has received legal aid in respect of the proceedings; or
the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the child representative;

the court must not make an order under subsection (2) against that party in relation to the costs of the child representative.

(5) In considering what order (if any) should be made under subsection (2) in proceedings in which a child representative has been appointed, the court must disregard the fact that the child representative is funded under a legal aid scheme or service established under a Commonwealth, State or Territory law or approved by the Attorney-General.

Schedule 7, item 35, page 48 (line 7), omit “Item 29 applies”, substitute “Items 29 and 29A apply”.

These three amendments being made by the government relate to changes to the child representative cost provision in item 29 of schedule 7 of the bill. These amendments respond to recommendation 1 of the Senate Legal and Constitutional Legislation Committee’s report on the provisions of the bill tabled on 13 August 2003. These amendments are also the result of further consultations with relevant stakeholders. The amendments, among other things, address concerns expressed by a range of stakeholders. I believe that they are self-explanatory and I commend them to the chamber.

Senator LUDWIG (Queensland) (2.23 p.m.)—The opposition will not be opposing the amendments. As I said during the second reading debate, the bill as printed would have effectively forced the Family Court to make cost orders against parents to cover the cost of child representatives. Concerns were expressed to the Senate committee that the bill as printed would make it harder for separating parents to reach full agreement and could make them more antagonistic towards the appointment of a child representative. It was also thought that it could prolong litigation as more separating parents dispute the amount of costs or the proportion that they would be required to pay. The Senate committee unanimously recommended that this part of the bill not proceed until the government had addressed these concerns. We are pleased that the government has responded with these amendments.

The amendments do three things. Firstly, they clarify that the Family Court actually has the power to make an order for costs or security of costs in relation to the costs of a child representative. That is helpful in itself in being able to bring some certainty to the issue. Secondly, they require the Family Court not to make such an order against a party if they have received legal aid or would suffer financial hardship, which is also helpful for the participants involved. Thirdly, they require the Family Court to disregard the fact that the child representative has been funded by legal aid. In our view these amendments preserve the discretion of the Family Court to make the most appropriate order in the circumstances of the particular case, having regard to, above all else, the best interest of the child as a paramount consideration.

In relation to the requirement that the Family Court disregard any legal aid funding to the child representative, we note that the advice of the Law Council of Australia to the Senate committee says:

The Family Court has hitherto in a few decisions of single judges held that notwithstanding the funding conditions in the legal aid agreement the Family Court’s discretion whether to make cost orders is unaffected by funding conditions or agreements between the States and the Commonwealth about legal aid funds.
I observe that if the Family Court already disregards any conditions or agreements governing legal aid funding to child representatives it is in substance no different to disregard the fact of legal aid funding to those child representatives and instead have regard to other circumstances of the case, including the conduct of the parties and the impact of any order on the interests of the child or children involved. As I said, these amendments preserve the discretion of the Family Court to deal with applications for cost orders on their merits. Accordingly, on that basis the opposition does not oppose them.

Senator GREIG (Western Australia) (2.25 p.m.)—We Democrats do oppose these government amendments. We feel that government policy in this area is wrong. We take a strongly counter view but, rather than speak to that now, I will explain in greater detail what our policy position is and what we would much rather see with the subsequent amendment, which would aim to bring about the reverse of what the government proposes here.

Question agreed to.

Senator GREIG (Western Australia) (2.26 p.m.)—The Democrats oppose schedule 7, item 29, in the following terms:

(12) Schedule 7, item 29, page 46 (lines 6 to 23), TO BE OPPOSED.

I wish to clarify my earlier point in opposing item 29. We Democrats feel that this ought to be the most important aspect of the legislation, or certainly one of the most important. It responds directly to a recommendation made by the committee—and Senator Ludwig spoke in part to that—which the government has chosen not to pursue.

The committee received a great deal of evidence regarding the proposed changes to the costs of child representatives, and the evidence was overwhelmingly critical and concerning. The bill proposes to require parties to bear their own legal costs and the costs of any child representatives in such proportions as the Family Court considers to be just. However, this does not apply to parties who received legal aid funding or who would suffer financial hardship if such an order were made. The most common argument against the proposed change, in submissions to the committee, was that it would be contrary to the best interests of the child.

Legal Aid Queensland argued that the potential increase in the costs of litigation might encourage parties to make agreements which reflect the parents’ needs rather than those of the children. The Law Council of Australia argued that the amendment might cause litigants, particularly those who are self-funded, to oppose the appointment of a child representative where it might otherwise seem appropriate. Victoria Legal Aid concurred with that view. The Legal Services Commission of South Australia made the point that requiring the parties to bear the costs of child representatives might result in parents selecting substandard or inappropriately qualified child representatives in order to save money. The Women’s Legal Resources Centre argued that the amendment might result in more women electing not to continue with proceedings in those circumstances where this was contrary to the best interests of the child.

The other issue which was raised in relation to this proposed change was the lack of consultation with relevant stakeholders regarding it. Both the Law Council and the Women’s Legal Resources Centre made the point that this proposal had not been included in the exposure draft of the bill that was circulated last year. The family law section of the Law Council argued that there are
a number of groups who should have been consulted, ranging from the Family Law Council and women’s and men’s groups to the legal aid commissions.

The Senate committee accepted this argument and recommended that item 29 not proceed until after appropriate wide-ranging consultation had been conducted with the relevant interest groups, and any relevant concerns addressed. The Democrats are persuaded by the strength of these arguments not only in relation to the lack of consultation but also in relation to the substance of the proposed change. We are concerned that this amendment will result in a reduction in the number of appropriately qualified child representatives in Family Court matters and that it would therefore be detrimental to the interests of Australian children in the long term. For those reasons we firmly believe that item 29 should be opposed.

Senator LUDWIG (Queensland) (2.29 p.m.)—For the reasons I have already outlined in relation to government amendments (3), (15) and (16), the opposition support the provisions as amended by the government in response to the concerns of the committee and, accordingly, we do not support the Democrats in opposing item 29.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.30 p.m.)—As a result of the previous amendments to child representative costs, the government does not believe it can support the Democrats in opposing item 29. The government considers that there may be circumstances in some cases in which it is appropriate for a party or parties to proceedings to pay a proportion of the costs of the child representative in those proceedings, and it opposes the Democrats’ opposition of item 29.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that schedule 7, item 29, stand as printed.

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

Third Reading
Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.31 p.m.)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

FINANCIAL SERVICES REFORM AMENDMENT BILL 2003
In Committee
Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that schedule 2, item 42, stand as printed.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (2.32 p.m.)—The Labor Party, the Australian Democrats and the government have been constructively moving forward on some suggestions that we made this morning about compromises in a number of areas. As I said, the policy objectives of all of the parties are almost identical. You would know from your own involvement in these issues, Mr Temporary Chairman Ferguson, that seeking, for example, a fee disclosure model for financial services products and superannuation in particular is an area where a lot of work is going on in Australia. Organisations such as ASFA, IFSA, ASIC and many other players have been seeking to find a disclosure model which improves consumers’ capabilities of comparing products with measures that are comparable and allows them to make an informed choice.

Senator Conroy has made a suggestion by way of his original amendment in relation to
dollar disclosure. I proposed that the government fully supports ASIC’s belief that that is by far the most desirable outcome and that how it is achieved and when it is achieved are really the only things we disagree on. I think we have now agreed on a process that will get us to that point in an agreed way. After the very constructive dialogue that has occurred between the parties—and I commend both Senator Conroy and Senator Murray for their active engagement in this—I have circulated a series of amendments, the first of which I have just referred to. It effectively brings forward the legal requirement for dollar disclosure to 1 July 2004.

I think we have 99 per cent agreement on most things. As well as bringing forward the implementation date of dollar disclosure, we are committing to changing the wording of the regulation. At the moment it effectively says that dollar disclosure is not required unless it is reasonably practicable. As I understand it, there is a disallowance hanging over that regulation which will hang while we go off to different parts of Australia for the summer. In the meantime, the government are going to commit to changing the wording of the regulation to, effectively, dollar disclosure unless ASIC determine that it is not possible for compelling reasons, which shifts the onus quite significantly in that direction. Of course if we do not follow through on that the Senate will disallow the regulation and do other nasty things to us. I think that deals with that provision and shows good faith.

We have also now circulated amendments (4) and (5) as a part of this package that bring forward the provisions of the Legislative Instruments Bill in relation to ASIC’s exemption and modification powers in proposed section 926. Amendments (6) and (7) relate to the provision of statements of advice in relation to the market situation. These are the stockbrokers’ provisions which Senator Murray referred to. He said that he would like to ensure that we have a provision that sees consumers, stockbrokers’ clients, get the benefit of a statement of advice but that would not involve enormous quantities of paper going out—and I think that was a serious risk with the Labor amendment as initially proposed.

I think there is no difference in intent or sentiment between any of the parties here. What we have been told, practically speaking, and that I am convinced of, is that many brokers have very long client lists. The client list builds up as the market booms and it diminishes as the market contracts. I think we have one of the very highest levels of share ownership in the world. I think something like five million people in Australia own shares directly, which is quite remarkable and a good thing. Mr Latham and I both agree on that, and so does Senator Conroy. But that means that there are potentially five million clients of brokers and if you required them under the law to all receive a check on their circumstances annually that, on the face of it, generates about five million letters, and no-one wants to do that. Our amendment is to ensure that people get that statement of advice when they seek some market related advice. Again, I do not think there is any difference in the policy intent and, as I understand it, this amendment will certainly satisfy me and will hopefully satisfy Labor and the Democrats.

There are other matters that I need to refer to. The request we have received from the Labor Party can be characterised as their seeking a commitment from the government as to when we would bring forward a regula-
tion to effectively replace the regulation that was defeated in the Senate earlier in the year.

Senator Conroy—And the content.

Senator IAN CAMPBELL—As you, Mr Temporary Chairman, and Senators Murray and Conroy know, the government made a commitment at the time the regulation was defeated not to bring a regulation forward until the transition had concluded. I think it is fair to say from the point of view of all parties that we established a process in good faith which would lead to what I hope—and am quite confident of this—is a consensus on building a world’s best practice model in this area. I think it is fair to say that that process has created some good results. You have got some strong positions within the industry, but they are all genuinely trying to get to the financial services nirvana of the perfect disclosure model for superannuation or financial products. Of course, we will not ever get to the perfect model, but I think the process we have got here in Australia is likely to lead to something that is extraordinarily good and much better than we have at the moment and certainly something we would like to get to.

My intention was to see that process concluded and then to bring forward a regulation. I am informed by the Treasury officials and by ASIC that that process will conclude—I think Senator Murray referred to some of the activity that had taken place by one of the consultants, Chant West, who are engaged in this process, and he has commended them for their work already today—around about the end of the financial year. I can say that the government’s intention remains to bring forward a regulation obviously in good time after that process concludes.

I would genuinely welcome from Senator Conroy and anyone else in the Labor Party their constructive—and I mean this very frankly—engagement in how that regulation might look. I am happy to look at a draft, quite frankly, or I am sure Mr Cameron will be, from Senator Conroy, Senator Murray and the joint statutory committee that does so much good work in this area. That is the best commitment that I can give on behalf of the government at this stage. The earliest we could bring forward a regulation would be around August if that process stays on track, and I am assured that it is on track.

Senator Conroy—In August next year?

Senator IAN CAMPBELL—The Chant West process and the ASIC process end in July, and I would like to reiterate that it is our intention to bring that forward. I think ASIC are also doing some review work on compliance with their best practice disclosure model in the meantime. That is the process we set up. Having given a commitment in this place to that—and it has been reiterated by the Treasurer and by the Parliamentary Secretary to the Treasurer—it would be entirely wrong of me to reverse that commitment when we are still within that period when I made that commitment. That is as far as I can go at the moment, but I am happy to deal with any questions.

Senator CONROY (Victoria) (2.44 p.m.)—I thank the minister for that. Labor welcomes the government’s suggestions and positive contributions. There was one issue that we believe had been agreed and it was in relation to the single bottom line issue and a particular form of words being included in the regulation. We are just looking to have that put on the record. We understood that the words in relation to this would be something like ‘that the costs of investing in a product be expressed as a single figure’. We understood that that had been agreed, so we are just looking for that to be confirmed.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order! We cannot have advisers talking across the chamber.
Senator CONROY—As I understand it, we are currently disallowing the regulation. We are seeking to bring forward a different wording in that regulation which incorporates the statement ‘that the cost of investing in a product be expressed as a single figure’. We understood that that had been agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (2.46 p.m.)—I was not actively part of those negotiations. I understand that what was agreed to was that the new regulation would say ‘unless ASIC determine that it was not possible for a compelling reason’.

Senator CONROY (Victoria) (2.46 p.m.)—That is correct, Senator Campbell, but next in the discussions was the inclusion of the phrase ‘the cost of investing’. We are looking for a commitment from the government—and we thought we had received one—that the words ‘the cost of investing in a product be expressed as a single figure’ be included as part of the regulation.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (2.47 p.m.)—That was the commitment that was sought. Our belief is that it is appropriate to deal with that in the regulation that would replace the regulation that was knocked off in relation to fee disclosure and that it would be inappropriate to do that until that process has been gone through—that is (1) the ASIC review of compliance and best practice model and (2) the Chant West process that is seeking to come up with the best practice model. Your preference is for a single dollar value for the cost of investing. Clearly, that is something that is under active consideration by that process. We are giving you a commitment that, after that process is concluded, it will be our intention to bring forward a regulation that will be framed as a result of that process. That cannot be before July. The government is happy to look at potential drafts in the meantime. We do not need a draft before us from anyone.

Senator CONROY (Victoria) (2.48 p.m.)—We are almost there, Senator Campbell. While I appreciate that you have accurately described that you have agreed to a process, what I understood had been agreed to was an outcome. The outcome was that the regulation contain the words ‘that the cost of investing in a product to be expressed as a single figure’. It was not a commitment to look at it as part of the process.

Senator Ian Campbell interjecting—

The TEMPORARY CHAIRMAN (Senator Ferguson) —Order! Hansard has to accurately record the deliberations of this chamber. If you are just going to chat backwards and forward, it is going to be a bit difficult. We had better do things properly.

Senator CONROY (Victoria) (2.48 p.m.)—I suggest that we need to have our advisers consult again, because there seems to be confusion as to what has and has not been agreed—unless we want this to blow out, which nobody wants. We are very close to an agreement. I suggest that we move on.

Senator MURRAY (Western Australia) (2.49 p.m.)—If the government and opposition decide that their advisers should consult, I would ask whether any other areas of agreement have already been reached between the government and the opposition that we could deal with in the meantime, rather than report progress and have to move on to another bill.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (2.49 p.m.)—I think there is agreement on all of these things. I
would be interested to know if Senator Murray had any alternative view. I am advised that we did not have an agreement on committing to the proposal that Senator Conroy has referred to. There has obviously been some misunderstanding, which I can understand. The government can happily give the commitments that I have given on my feet, as reflected in the amendments, and also bring in a new regulation that changes the balance from ‘reasonably practicable’ to requiring ASIC to be convinced that there is a compelling reason not to disclose in dollars. That is what we are proposing. If we made a further regulation in relation to a single figure, we may as well just get rid of Chant West work, collapse all that process and ignore it. I think that we have gone a long way to finding an agreement, but I can assure Senator Murray and the chamber that we are not in a position to agree to this further request now. It would be a repudiation of an undertaking that has been given by us, and we are not prepared to repudiate it today.

Senator MURRAY (Western Australia) (2.50 p.m.)—I understand all that. However, I have sheet 3242 revised from Senator Conroy which has eight amendments on it and only one has been dealt with to date. I am asking whether any of those remaining seven can be dealt with. I also have sheet QU240 from the government with 12 amendments on it. If the government and the opposition have agreed to any of those amendments, surely we can put those and get rid of them so that what is left is the matter in dispute.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (2.51 p.m.)—As I understand it, we have agreed to all of these amendments. However—and I do not want to put words in Senator Conroy’s mouth—what he has been saying is that, if we do not agree to this new bottom line dollar disclosure, he will not agree to any of these. I think that is the position, which I respect. I think we have got an agreement on everything that is in these amendments. If that is so, we can actually put, by leave, all of these amendments together and have one vote and be out of here.

Senator CONROY (Victoria) (2.52 p.m.)—I would like to try and clarify what it is we are having a discussion about so that we can all go home. My understanding is that we have a commitment from the government that a regulation will be brought forward that includes a commitment for the single bottom line figure to be within that—not to be thrown into another process that is already going on. You are not agreeing to give us anything by saying that there is a process going on. We do not trust it and we are not interested in it being thrown into an existing process and coping what is given out at the end. What we are interested in is whether or not—maybe there is just complete confusion, and I take responsibility for that if there is—we have a commitment from the government that it will bring something forward that incorporates the concept. Perhaps you are not comfortable with the words I have just described. I am prepared to be flexible. But I need to know whether or not there is commitment that this be included in that reg that you are going to bring forward.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (2.53 p.m.)—No, we cannot give that commitment in this particular reg. I think we are both talking about the reg where we are replacing the words ‘reasonably practicable’ with ‘unless ASIC determine that it is not possible for compelling reasons’. That is our commitment and that is the beginning and end of it. We cannot go further than that, and I think that is where we have to disagree on it. Where we bring forward the other reg is the August one, and we cannot do better than that.
Senator CONROY (Victoria) (2.54 p.m.)—It has been a long day and a long week. I am not asking for it to be in that first reg you are describing but in the reg at the end of the process for what you call August. I would prefer it to be earlier and I wish it could be earlier, but it will be contained in a regulation that you are bringing forward in around August. I thought that is what we agreed.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (2.54 p.m.)—The government will not pre-empt that process. We will not give that commitment. That is not to say we will not do it, but we are not going to pre-empt a process that is set up to come with the reg. So we cannot help you there. I am afraid I cannot do that.

Senator MURRAY (Western Australia) (2.55 p.m.)—It seems to me that we are talking about two regulations here. The first one there is agreement on, blazing agreement. The second regulation will, of course, be disallowable. I think the clear threat from Senator Conroy—I do not mean it in that aggressive sense but it is there explicitly, I think—is that, if you do not attend to the matter he wishes attended to, that regulation is capable of being disallowed.

Senator Ian Campbell—Yes.

Senator CONROY (Victoria) (2.55 p.m.)—Unfortunately, that is called the bum’s rush, because that is exactly where we are at right now. They introduced a dud regulation that we disallowed and therefore we got nothing. If we disallow the regulation in August or whenever they get round to doing it, we will again have nothing. The issue here is whether we take the opportunity to ensure that some things are contained in it. We thought we had reached an agreement on that, and I am not casting aspersions on any-one; there is genuine confusion. But the issue here is that we will get nothing because, as you understand, we cannot introduce something into a reg, Senator Murray. The only place we can enforce what would be the Senate’s will is in legislation. I am not trying to slow the day down, but the only place we can reach an agreement that the government will be forced to keep is here on the floor of the Senate. Because of the process of the regulation making powers, we do not have a capacity to do anything other than negate; we cannot insert. The government are not interested in doing this because the industry do not want this. This is the one I called earlier the wooden stake to the vampire. This is the one that actually starts to flush them out. The only place we can do it is here and now, Senator Murray, and if the government will not give us a commitment then I do not think we will have achieved anything.

Senator Murray—I think you mixed your metaphors, by the way.

Senator CONROY—I am very good at that; it is one of my specialties.

Senator MURRAY (Western Australia) (2.57 p.m.)—I am sorry to be a bit slow on this, but I was checking my notes. What exactly are we voting on? All that I have before me is that when we rose we were examining a particular amendment of the opposition, and I now have a revised sheet—

The TEMPORARY CHAIRMAN (Senator Ferguson)—It is actually opposition amendment (2).

Senator MURRAY—that is right, which relates to exemptions and modifications by ASIC.

The TEMPORARY CHAIRMAN—Yes, that is the one we are voting on. The question is that section 926A in schedule 2, item 42, stand as printed.

CHAMBER
Question put:
That schedule 2, item 42, stand as printed.

The committee divided. [3.03 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes………… 35
Noes………… 24
Majority…….. 11

AYES
Abetz, E. Barnett, G.
Bartlett, A.J.J. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Cherry, J.C. Colbeck, R.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M. *
Greig, B. Heffernan, W.
Humphries, G. Johnston, D.
Kemp, C.R. Lees, M.H.
Lightfoot, P.R. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Murray, A.J.M.
Patterson, K.C. Payne, M.A.
Ridgeway, A.D. Santoro, S.
Scullion, N.G. Stott Despoja, N.
Tierney, J.W. Vanstone, A.E.
Watson, J.O.W.

NOES
Brown, B.J. Backland, G.
Collins, J.M.A. Conroy, S.M.
Crossin, P.M. * Denman, K.J.
Evans, C.V. Faulkner, J.P.
Forshaw, M.G. Harradine, B.
Hogg, J.J. Hutchins, S.P.
Kirk, L. Lundy, K.A.
Mackay, S.M. Marshall, G.
McLucas, J.E. Murphy, S.M.
Nettle, K. O’Brien, K.W.K.

Ray, R.F. Stephens, U.
Webber, R. Wong, P.

* denotes teller

Question agreed to.

Senator CONROY (Victoria) (3.07 p.m.)—Hopefully, this will complete this bill. I think we have a proposal that we can agree on. We have two alternative paths. One is for an amendment to be inserted into the law right now that reads:

The cost of investing in a product be expressed as a single figure, unless ASIC determines that it is not possible due to compelling reasons.

Alternatively, the government can give a commitment that that concept will be included in the final regulation that is brought forward on this, as was indicated in August.

Senator MURRAY (Western Australia) (3.09 p.m.)—If I can add to that approach, what Senator Conroy is indicating is an intent and that, were there to be compelling reasons, he would be prepared to be persuaded otherwise. So the only addition we suggest you might want to make to your proposal is that unless ASIC—or this process, review or however you define it—has compelling reasons that they would consider otherwise. I would add to that that the matter should then be resolved with the opposition, because, while this matter would not have to be bipartisan, it would be very unwise to get resolution of the issues without the support of the opposition. Essentially what Senator
Conroy has offered is not an absolute but a concept subject to ASIC’s view. What the minister has been saying is that he also has a process—which I am sure is reputable—that also needs to have input into it.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.10 p.m.)—I am happy to make the commitment on behalf of the government in those terms.

Senator CONROY (Victoria) (3.10 p.m.)—I can only say that I am not interested in a process that is going to dud us. I do not believe in the government’s process. I have never yet seen this government come up with a process that has delivered an outcome that I was happy with.

Senator Ian Campbell—What about CLERP 1, 2, 3, 4, 5, 6 and 7?

Senator CONROY—We moved plenty of amendments to those. What we are seeking is a specific commitment about what is contained in the outcome. If we cannot get that commitment today, we will move an amendment to make it the law. I am hoping the government will give that commitment, otherwise I will just move an amendment.

Senator Ian Campbell—I’ve given the commitment.

Senator CONROY—No, Andrew is suggesting that the opposition has to be part of the commitment. I appreciate that you have given a commitment in the terms Andrew has expressed it, but that is not how I have expressed it.

Senator MURRAY (Western Australia) (3.11 p.m.)—May I make the suggestion—because we have three people here who understand the issue—that for ASIC to arrive at a view which is not the intent that you put before it for compelling reasons, they would have to go through a process themselves. There is always a process where you would take a contrary view to the intent. Minister, I think you have to give a commitment from the government that you support the intent but you accept that there may be compelling reasons to overturn that intent. That is what I understand Senator Conroy to be suggesting. As I understand it, Senator Conroy is not saying in an absolutist sense: ‘There are never any occasions when that concept could not be overturned.’

I struggle to be clear about this because, as I see it, you have no disagreement on the concept; you merely say that you need a time period in which to resolve when there would be compelling reasons that that concept would not be appropriate. As I understand it, that is what Senator Conroy is saying. But what he is expressing is a lack of faith or trust that the government will carry through that concept—and yet the government agrees with the concept. What we need is a form of words in a chamber commitment. Senator Conroy has clearly indicated he is prepared to trust the word of the minister given on the floor of this chamber, providing the nature of those words is explicit and clearly understood in a common manner.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.13 p.m.)—I agree with Senator Murray’s approach and I am happy to give that commitment. I know that is not what Senator Conroy wants, and I cannot go as far as what Senator Conroy wants. To move the process forward, I now need to move government amendments (1) through (12) as circulated on sheet QU240. I seek leave to move those together.

Leave granted.

Senator IAN CAMPBELL—I move:
(1) Clause 2, page 2 (table item 3, column 1), omit “items 1 to 87”, substitute “items 1 to 46C”.

(2) Clause 2, page 2 (after table item 3) insert:

3A. Schedule 2, 1 July 2004
items 46D, 46E and 46F

3B. Schedule 2, The day after this item 47 to 72
items 72A Act receives the Act receives the
Royal Assent

3C. Schedule 2, 1 July 2004
item 72A

3D. Schedule 2, The day after this item 73 to 87
items 72 Act receives the Act receives the
Royal Assent

(3) Clause 2, page 2 (after table item 4) insert:

4A. Schedule 2, 1 July 2004
item 88A

(4) Schedule 2, item 42, page 26 (lines 3 and 4), omit subsection 926A(4), substitute:

(4) An exemption or declaration is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901 if the exemption or declaration is expressed to apply in relation to a class of persons or a class of financial products (whether or not it is also expressed to apply in relation to one or more persons or products identified otherwise than by reference to membership of a class).

(4A) If subsection (4) does not apply to an exemption or declaration, the exemption or declaration must be in writing and ASIC must publish notice of it in the Gazette.

(5) Schedule 2, item 42, page 26 (lines 9 and 10), omit “with the gazetral requirement of subsection (4)’, substitute “with the requirements of subsection 48(1) of the Acts Interpretation Act 1901 as applying because of section 46A of that Act, or with the gazetral requirement of subsection (4A), as the case may be’.

(6) Schedule 2, item 46A, page 29 (before line 4), before subparagraph (1)(d)(ii), insert:

(ia) the providing entity has, either immediately before the further market-related advice is given, or within the preceding 12 months, checked with the client whether the client’s objectives, financial situation and needs have changed since the last time the providing entity checked with the client about those matters; and

(7) Schedule 2, item 46A, page 29 (line 5), after “advice”, insert “(determined having regard to the client’s objectives, financial situation and needs as currently known to the providing entity)”.

(8) Schedule 2, page 30 (after line 30), after item 46C, insert:

46D At the end of the subsection 947B(2)
Add:

; and (h) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (d) and subparagraph (e)(i), any amounts are to be stated in dollars.

(9) Schedule 2, page 30 (after line 30), after item 46C, insert:

46E At the end of subsection 947C(2)
Add:

; and (i) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (e) and subparagraph (f)(i), any amounts are to be stated in dollars.

(10) Schedule 2, page 30 (after line 30), after item 46C, insert:

46F At the end of subsection 947D(2)
Add:

; (d) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (a), any amounts are to be stated in dollars.
(11) Schedule 2, page 36 (after line 28), after item 72, insert:

72A At the end of subsection 1013D(1)
Add:
; and (m) unless in accordance with the
regulations, for information to be
disclosed in accordance with
paragraphs (b), (d) and (e), any
amounts are to be stated in dollars.

(12) Schedule 2, page 47 (after line 28), after
item 88, insert:

88A After subsection 1017D(5)
Insert:
(5A) Unless in accordance with the
regulations:
(a) for information to be disclosed in
accordance with paragraphs (5)(a),
(b), (c), (d) and (e), any amounts are
to be stated in dollars; and
(b) for any other information in relation
to amounts paid by the holder of the
financial product during the period
any amounts are to be stated in
dollars.

Can I just make it clear that the government
cannot accept a bill that has a provision in it
to impose what Senator Conroy wants in
terms of a bottom line, single figure for the
cost of an investment. If that amendment
were to get into the bill, it would have to be
returned to the Senate from the House of
Representatives. The government can pro-
ceed on the basis of the undertakings that I
have given to Senator Murray’s concept, and
is happy to proceed on the basis—

Senator Conroy—I don’t think you un-
derstand Senator Murray’s concept.

Senator IAN CAMPBELL—I do.

Senator CONROY (Victoria) (3.15
p.m.)—I seek leave to have amendment (4)
dealt with separately. It is the only one we
have any difficulty with; all the rest are
agreed.

Leave granted.

The TEMPORARY CHAIRMAN
(Senator Chapman)—The question is that
government amendments (1) to (3) and (5) to
(12) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The
question now is that amendment (4) be
agreed to.

Question agreed to.

Senator CONROY (Victoria) (3.16
p.m.)—The only outstanding item over
which we still appear to have some confu-
sion is whether or not we will require the
single bottom line figure to be part of the
legislation, given that the government will
not give a commitment to put it in the final
outcome. I am happy to move that way be-
cause that seems to be what you are happy
with and what we are happy with. I am dis-
appointed that the government will not give a
commitment to agree to have that as an out-
come. I seek your guidance as to whether we
should proceed with that amendment.

Senator MURRAY (Western Australia)
(3.16 p.m.)—The difficulty here is that we
are dealing with matters on the run and we
need some specific words before the cham-
ber. Let me restate my understanding of the
matter: the chamber supports the concept
of—that is the line you have read out, which
I do not have before me—the single dollar
figure, but accepts that there may be compel-
ling reasons established by ASIC to override
that. As I understand it, the additional quali-
fication that the minister provides is that
there may be occasions arising from the re-
view which will provide guidance to ASIC
when there are compelling reasons that it
should be overridden. How you express
those in precise writing, I am not sure.
Senator CONROY (Victoria) (3.17 p.m.)—I think Senator Murray is indicating that the chamber supports inserting this in the bill. Minister, I said earlier that you had not understood Senator Murray; he is talking about an ASIC process of examining the individual items that could be put forward and whether they are excluded from it, whereas you keep referring to an ASIC process which is the review of what should be contained in their assessment process, and they are two different things. What Senator Murray and I talked about is different from the process you are talking about. I do not want anyone to be under a misapprehension. Your process and your review are not what Senator Murray and I are talking about. What we are talking about is: the legislation is in place and ASIC will then go through a review process of looking at each individual item, whereas you are talking about something completely different and you are not prepared to come to meet us. I can only suggest that in a moment we will write out an amendment and then move it, which is silly, unless you are prepared to accept it one way or the other. Perhaps the government could indicate whether it is prepared to accept the amendment. Otherwise we are going to be here all night.

Senator MURRAY (Western Australia) (3.19 p.m.)—May I suggest to the minister that it is not an absolutist commitment. There is the option clearly given to you by both of us that there is a qualification, that if there are compelling reasons for it not to be done it will not be done.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.19 p.m.)—As I understand Senator Murray’s proposition, we are quite happy to make that commitment. Senator Conroy is saying that he is not happy with that, that he wants to amend it and put into the legislation a provision that, commencing immediately, there will be a requirement for all financial services product offerers to put a single bottom line figure for the cost of the investment in their disclosure documents. He wants to amend the legislation to make the requirement to tell us when the provision may commence. I make it very clear that, if an amendment to the bill proceeds in those terms, that amendment would not be accepted by the government and would be returned from the House of Representatives. I am proposing that the bill goes forward as amended at the moment and it will be accepted by the government. I am prepared to accept the process that Senator Murray has outlined to us in good faith.

Senator CONROY (Victoria) (3.20 p.m.)—Once again, Senator Ian Campbell is deliberately verballing Senator Murray. That is not at all what Senator Murray has indicated.

Senator Ian Campbell—I have agreed with everything he said.

Senator CONROY—No, you are deliberately verballing Senator Murray. You are misrepresenting what he is saying. Senator Murray has completely captured the sentiments of Labor’s arguments and has expressed them very succinctly. You are deliberately trying to suggest that he has said something different. You are wasting the time of the chamber. You are wasting the time of the parliament and you are going to keep everybody here all night because of this.

Senator Ian Campbell—Move your amendment.

Senator CONROY—We are just having it drafted.

Senator MACKAY (Tasmania) (3.22 p.m.)—I have watched this debate with interest, and everybody in the chamber would be aware of my in-depth knowledge in this area. Having listened to the debate very carefully, on balance I probably do agree with
Senator Conroy’s analysis of the situation. I believe that, if this were to continue too much further, we may be in a position to eat Christmas dinner here. I am hopeful that as I am speaking, drawing on the deep well of knowledge I have with respect to this area, we are close to a conclusion on negotiations. I know that Senator Murray is a very genuine person and is seriously attempting to assist Senator Conroy with respect to the development of an amendment. I am sure that this will be achieved very quickly—in fact, as I understand it, there seems to be some movement in respect of this amendment. I notice my colleague Senator Wong, who has probably a more in-depth knowledge than I do with respect to this area, is here. She indicates that she wishes to make a few comments, so I will allow her to do so.

Senator WONG (South Australia) (3.23 p.m.)—This legislation is fundamentally about the rights of consumers to obtain proper advice in the area of financial products and financial services. As I understand the amendment that is currently being debated, it is an issue about what information is to be provided to people who purchase or who are provided with financial advice or financial product advice. What Senator Conroy is indicating on behalf of the opposition is that our view is quite clearly that this information needs to be provided in ways that consumers understand. Many of us, through our constituents and particularly if we have had much involvement in the parliamentary committees dealing with this matter, know that there is not a great deal of consumer knowledge about financial products and financial services, and there unfortunately are people in this sector who gain some financial advantage from that lack of knowledge amongst Australian consumers. As I understand Senator Conroy’s position, he is trying to move an amendment or facilitate a conclusion which assists in the provision of clear advice to Australian consumers.

Senator MURRAY (Western Australia) (3.24 p.m.)—I note that the minister is not in his chair, but he perhaps might be able to hear my voice as he returns to it. The minister has got us over a barrel. We are quite happy to have all our senator colleagues here day and night, but we feel deeply sorry for those poor creatures in the House of Representatives who unfortunately need earlier sleep than we do. So, what are we faced with? I think the proposition that I have put—I will put it in my words, not in yours, Minister, and they are already on the record—is the way to go. The alternative, which is just not feasible in the time we have, is for the law to be amended. That would take, at a minimum, half an hour and really should take a lot longer to arrive at a decent explanation of the principles we outlined in the law. We do not have time to do that.

There is only one mechanism left to the Senate. You should clearly understand, Minister, the Democrat support for Labor’s concept, always with a qualification of an out—it is not an absolutist principle. On that basis, you must recognise that there is a disallowance motion for the regulations, which is before you. You must recognise that unless, between the office of the shadow minister and the parliamentary secretary responsible, there can be a resolution of this matter in a way that can be properly dealt with next year, you face the very strong danger that we will join with Labor to disallow the regulations. We will do so, because the principle that Labor are expressing is one which is vital to the integrity of this legislation. What is odd to me in this debate is that the government in fact agree with that principle. The government agree with the concept of the
single disclosable figure because that is the cleanest and clearest exposition of the principle from the point of view of the consumer. It is the logic of the legislation and the framework we have.

You place yourself in danger, Minister: you will get your bill, and the debate has been productive because we have had a number of amendments which we think advance the bill considerably, but please do not think that it does not mean that Labor’s very clear need should not be addressed, because it needs to be addressed. I do not think I can say any more than that.

Senator BROWN (Tasmania) (3.27 p.m.)—Just to help Senator Murray and all concerned, I concur with that viewpoint of Senator Murray’s. I assure everybody that the Greens are solid with that viewpoint and will be when the regulations appear.

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) (3.28 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

ASIO LEGISLATION AMENDMENT BILL 2003

Consideration resumed from 3 December.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (3.29 p.m.)—At the outset, I recognise the distress some people are having as plane departure times appear. I give a commitment—and I have spoken to Senator Greig—that, though we take this bill as being an extraordinarily important piece of legislation, I will not be calling divisions after four o’clock. I might add that the situation we recognise in the committee is that the government and opposition share support for the legislation and opposition to the amendments, so we will be going through the amendments and putting our case strongly and we will be asking the minister for some information to help clarify points as we go along.

I want to reiterate that this legislation is not technical, as the opposition would have it. It is draconian legislation that cuts right into the legal, civil and political rights of 20 million Australian citizens. It is different to the US PATRIOT Act because under that act citizens who are innocent cannot be arrested; but, as we know, under the ASIO legislation which has been approved in this country they can. This legislation, amongst other things, prevents reporting on the holding of citizens, innocent or otherwise, while they are questioned by ASIO. What is more, it prevents any reporting, public debate, discussion or disclosure of the citizens of Australia being held under those circumstances for two years.

I will read what Michael Moore, the great liberal commentator of the age in the United States says about the PATRIOT Act, which does not go so far as to allow innocent citizens to be arrested but does allow an extraordinary invasion of privacy and citizens’ rights in the United States. It has parallels with the pieces of legislation we see in Australia. I am reading from page 103 of his book Dude, Where’s My Country. I would recommend that every senator read it. It says:

A great president once said that we have nothing to fear but fear itself. He encouraged and inspired a nation. Now we have nothing to fear but George W. Bush. It is my firm belief that Bush and his cronies (especially Attorney General John Ashcroft) have only one goal in mind: To scare the bejesus out of us so that whatever bill they
USA Patriot Act is really a gross misnomer. This law is anything but patriotic. The “Patriot” act is as un-American as Mein Kampf. The name is part of a masterful plan meant to camouflage a stench thicker than Florida swamp water.

Serially, we are seeing the same process in our great parliament: the stripping away of fundamental values by the very leaders who proclaim freedom and liberty almost every time they put themselves behind a lectern in this country and overseas. It is not just the hypocrisy of it all; it is the tragedy and the danger of it all that we as democrats in the true sense of that word and liberals in the true sense of that word have to fear. That is what we are debating today in this chamber.

This piece of legislation has been left until the last thing in the year and we have to ask ourselves: why are we rushing this through today? No reason has been given—none at all. It is a political move by the Attorney-General and the Prime Minister and it has no warrant. However, deal with it we will. The Greens oppose schedule 1 in the following terms:

(1) Schedule 1, Part 1, page 3 (lines 4 to 31), TO BE OPPOSED.
We oppose the doubling of the time of questioning of people held in secret by ASIO where an interpreter is warranted. I say again that there is very strong legal advice that this breaches international laws protecting the rights of citizens to be treated equally. However, we have a person who is being held in secret by ASIO who is innocent, and known to be innocent by ASIO but they want to extract some information, and who is being held in circumstances in which the media and public cannot comment in Australia if this bill gets through. Firstly, I ask the minister: what happens to people with physical disabilities—for example, a hearing impairment—who may need an interpreter? Are they captured by this particular part of the
legislation so that they can be held twice as long as anybody else and questioned for twice as long—in eight-hour blocks—as anybody else?

Secondly, can the minister say why this legislation does not require an interpreter to be used to allow this doubling of time for questioning throughout; why it just needs an interpreter to introduce herself or himself, stand aside and then questioning can proceed for twice as long? This is actually an avenue for doubling of the time for questioning as granted by the parliament under the previous legislation. It is a backdoor way to doubling the time to question people who are innocent and who are held in secret by ASIO.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.38 p.m.)—The government does not support the Greens in opposing part 1 of schedule 1. I would like to answer the questions that Senator Brown has put. Certainly we believe that the interpreter provision is a reasonable one and that it is appropriate to double the maximum questioning time for all persons who need an interpreter because of an inability to communicate in English. It is not practically possible for the legislation to introduce differential formulae by reference to highly specific factors such as the nature of a disability or the speed and competence of the interpreter or translator.

The key point is that, in all cases involving an interpreter, an extension will be given if the prescribed authority considers it can be justified on the basis that the continuation of questioning will assist the collection of important intelligence in relation to terrorism offences. I point out that it is this criteria rather than individualistic factors such as the nature of a disability or the speed of an interpreter which should govern the decision on whether extra time is justified. Certainly, the prescribed authority is the person who governs the questioning regime, and a person’s disability would obviously be taken into account. I think we cannot go into much more than that to cater to those specific aspects that Senator Brown has mentioned.

Senator BROWN (Tasmania) (3.39 p.m.)—The minister is wrong on two counts. Firstly, this will be used and can be used to effectively discriminate against disabled people, Australian citizens, who will have the questioning process applied to them for twice as long as it is for anybody else. There is nothing in here and nothing in what the minister has said to countermand that. Second, it is not just up to the prescribed authority. That is not written into this legislation. There is no requirement in this amending legislation that the presence of the interpreter has contributed to, or substantially contributed to, delays or to the suspension of questioning to satisfy the prescribed authority that lengthy questioning ought to be undertaken.

I reiterate that there is nothing in here to say that an interpreter has to be used at all. An interpreter just has to be called because the English of the person is not satisfactory to ASIO. They call in an interpreter and then they get on with the questioning while the interpreter sits aside and may occasionally be referred to. The lengthening of the questioning period is not incumbent on the interpreter being used or the questioning going through an interpreter. It is just simply that one has been called, has been employed, and, ipso facto there is a doubling the questioning time allowed for the person who has been brought in off the street.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.41 p.m.)—I want to briefly outline the position of the opposition in relation to this matter. We have consistently said in relation to this issue of interpreters that we believe
this is a reasonable change to the act. It is a reasonable change partly because certain weaknesses, loopholes if you like, have been discovered as a result of recent ASIO inquiries and operations, and this, frankly, is one of them. What this bill would do is permit a prescribed authority to extend the time available to question the subject of a warrant for an additional three eight-hour blocks, bringing the maximum possible period of questioning to 48 hours.

It is important for this committee to understand that the maximum period a person could be detained remains the same, and that a person can only be questioned for eight hours in any one 24-hour period. The criteria for allowing any further eight-hour block of questioning would be the same as for earlier extensions. So this is, if you like, a change to the mechanics of the way the act works. It is not a change to the fundamental framework.

Of course, the prescribed authority would have to be satisfied in any instance that further questioning would substantially assist the collection of intelligence in relation to a terrorism offence and be satisfied that the questioning through an interpreter is being conducted properly and without delays.

We know that, thanks to this chamber and the amendments carried here, senators insisted that the prescribed authority be an eminent person, a retired or serving judge or presidential member of the AAT. The intention of the questioning regime is to give ASIO sufficient time within a safe environment under the control of a prescribed authority to question people where other methods of intelligence gathering would be ineffective.

In the view of the opposition, the amendment in this bill regarding questioning time when interpreters are being used is eminently reasonable, given the operational experience since the legislation we passed earlier this year has come into force and actually been used by ASIO. The committee have to take account of these operational experiences, and ASIO has been able to advise that the questioning time is effectively halved when a person is questioned using an interpreter.

The reality is that the capacity of ASIO to gather intelligence that might substantially assist in preventing a terrorist attack is seriously diminished. That has never been the opposition’s intention. It has never been the Senate’s intention. This amendment from Senator Brown should not be supported, because we believe that the proposal before us from the government in the bill is based on objective and reasonable criteria. It is important to remember that comparable provisions already exist—there is a comparable provision in section 23C of the Commonwealth Crimes Act—so I believe that there is no case for the Committee of the Whole to support the amendment that stands in Senator Brown’s name. For those very substantive reasons, which I believe add up to a very clear and very strong case, the opposition will not be supporting this amendment.

Senator BROWN (Tasmania) (3.46 p.m.)—That is a specious government defence by Labor, with no substance. With respect to the assertion being made that there is some operational experience, this committee has been given no such evidence, nor will it get any. The Labor case falls on that very fact.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that schedule 1, part 1, stand as printed.

Question agreed to.

Senator GREIG (Western Australia) (3.47 p.m.)—I move Democrat amendment (1):
(1) Schedule 1, item 5, page 6 (after line 12), after subsection (2A), insert:

(2B) If the warrant is one meeting the requirements in paragraph 34D(2)(a) and the prescribed authority gives a direction under subsection (1), that direction must be approved in writing by the Minister:

(i) as soon as practicable after the direction has been given by the prescribed authority; and

(ii) no later than 24 hours after the direction has been given by the prescribed authority.

(2C) If subsection (2B) applies but the direction given by the prescribed authority is not approved by the Minister in writing before the expiration of 24 hours after the giving of the direction, the person must be released from detention.

This amendment applies to a direction by a prescribed authority for a person who is subject to a questioning warrant to be immediately detained. While the immediate detention of a person is usually required to be specified in the warrant, the government proposes here to amend the legislation to enable a person who is being questioned to be immediately detained. The government has said that the amendment contained in item 5 of the bill is intended simply to clarify its current interpretation of the act. We are not convinced of that, and we disagree.

Our interpretation of the current provisions is that they clearly do not permit the prescribed authority to make such a direction in relation to a person who has simply been required to appear before the prescribed authority for questioning. During the briefing provided to the Democrats by the Attorney-General’s Department yesterday I think it was, it was conceded that ASIO had received legal advice from the Australian Government Solicitor to the effect that the act could be read as permitting such a direction but that there was a possibility that the court would take a different view. So, as a starting point, we Democrats believe it is a little disingenuous of the government to describe this provision as a mere point of clarification. It could more accurately be described as giving effect to the government’s original intention.

The Democrats’ initial response to this amendment was to oppose it and replace it with a provision which made it clear that a direction by the prescribed authority to detain a person was in fact inconsistent with a mere questioning warrant and, therefore, it would be necessary to obtain the minister’s approval before making such a direction. This is still our reading of the original provisions. However, as a result of the briefing provided by the Attorney-General’s Department, we Democrats acknowledge that there is a need for change. We accept that there may be circumstances in which a person who is being questioned may need to be immediately detained. We note that, under the current provisions of section 34F, a prescribed authority can only make a direction for the immediate detention of such a person if there are reasonable grounds to believe that the person either:

(a) may alert a person involved in a terrorism offence that the offence is being investigated; or

(b) may not continue to appear, or may not appear again, before a prescribed authority; or

(c) may destroy, damage or alter a record or thing the person has been requested, or may be requested, in accordance with the warrant, to produce.

Democrat amendment (1) reflects our view that, while there may be urgent circumstances in which the security of the community could be put at risk if it was necessary to obtain the minister’s approval prior to making such a direction, nevertheless the minister’s approval should still ultimately be ob-
tained. The amendment inserts a requirement for the minister’s approval to be obtained as soon as practicable and, in any event, within 24 hours of the person being detained. If the minister’s approval is not obtained within that time frame, then the person must be released. The amendment seeks to achieve what we believe is an appropriate balance between responding to urgent situations and, at the same time, ensuring ministerial and ultimately parliamentary accountability. We believe it provides a more appropriate option than the government has put before us and, on that basis, we commend it to the committee.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.51 p.m.)—The government opposes this amendment. The government believes that, in essence, the Democrat amendment would mean that, in any circumstance in which the prescribed authority gave a direction, the direction would be subject to a subsequent process of ratification by the minister. If that direction were not ratified within 24 hours, the person would be required to be released from detention. The government believes that this leads to uncertainty. For instance, each time any direction was made, such as a direction to reappear for questioning in three days or whatever else was directed by the prescribed authority, that could be subject to ministerial ratification, which would really make things more uncertain. The government does not believe the amendment achieves what it sets out to do and, for that reason, opposes it.

Senator BROWN (Tasmania) (3.52 p.m.)—I ask the minister: how many times have people been detained under these provisions?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.52 p.m.)—No-one has been detained under the new powers relating to ASIO.

Senator BROWN (Tasmania) (3.52 p.m.)—But Senator Faulkner just said that it was operational experience that was being brought to bear on this legislation. Is the minister telling me that there has been no experience and that conjecture is wrong?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.53 p.m.)—As Senator Brown knows, there are two sorts of warrants—and we had a question the other day about the powers that had been used—a warrant for questioning and a warrant for detention. That is the issue here. You have asked about detention and I have answered that. I answered a question by Senator Greig the other day in relation to questioning.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.53 p.m.)—I will address this matter before the chair and stress—because I think it is very important in this committee stage debate—that these amendments are being driven by the agency. I believe they are being driven by ASIO. The opposition has been satisfied on that point. I do not believe that they are matters that are being driven by government or by the minister or by the Prime Minister or out of the minister’s office. I am certainly satisfied that ASIO has been able to identify a number of technical problems that have arisen under the new questioning regime. That is the situation that the opposition has been briefed on.

These provisions close loopholes in the new questioning regime. They address a limited number of technical flaws that have been identified. They do not change the framework of the legislation at all. They do not extend the maximum period of detention for questioning. They do not limit access to legal
advice or change the very strong safeguards in this legislation that this chamber insisted on when the original ASIO bill was passed.

In saying that, this committee needs to recognise that the provisions are less stringent than those that are currently in place for other organisations that also have a responsibility to investigate serious criminal activity. The provisions are less stringent. The crime commissions, courts and royal commissions all have power to impose secrecy on their investigations or proceedings and we say in relation to the measures proposed in this legislation that ASIO should be able similarly to protect the integrity of their investigations.

We also have to be frank and acknowledge that during earlier debate on the ASIO bill it was the opposition—it was Labor—that proposed and supported stronger secrecy provisions applying to the subject of the warrant and the lawyer. At that time, even though the amendment was not successful, we proposed creating an offence for disclosing anything about the questioning under the warrant for an indefinite period.

Having said that, I want to remind the committee that this bill, these provisions, are also subject to the existing review provisions and sunset provisions which had previously been agreed to in the chamber—and that is important. I would hope that that would give many senators, if there are concerns about these technical amendments, answers to those concerns. Certainly the Labor Party is satisfied that there is no reason to have concerns, but some might and I understand that. People take this sort of legislation seriously. They care about it. They put demands on chambers like the Senate to get this right. You cannot be satisfied that the government will get it right—they have not in the past. A heavy responsibility, a heavy burden, falls on this chamber to ensure that we get the balance right.

But if a piece of legislation is heavily amended in this chamber and the relevant agency in good faith, and the Attorney-General’s Department and the Attorney-General say to us, ‘This regime is working very well but here are some technical flaws,’ doesn’t a responsible opposition and a responsible parliament actually have a duty of care to fix those matters? I believe we do. I want to say publicly that I have been assured by the Director-General of ASIO that the amendments to the bill that are before us today are all that is required to tighten the questioning regime. I hope that is also something that will allay concerns about these matters, if anybody outside the chamber has concerns.

We say that with some of these issues—like the one we have just dealt with in relation to interpreters and like the proposal in relation to passports, which is unremarkable and ought to be uncontroversial—the problems, if there are any, ought to have been identified earlier. You see, the focus of the earlier legislation was never on getting the regime right—never on getting the law right. It was always about politics. Some of these things were probably created inadvertently when the government was focused on playing politics. Here is a chance to fix those four areas that have been identified—and it is just limited to four areas.

That is the responsibility of the parliament when it is drawn to our attention by the relevant agency. It is certainly a responsibility that the Labor Party steps up to the plate and accepts. I am pleased to say that the government party room again took its responsibilities in this area seriously as it knocked a lot of rough edges from the legislation—as you would know, Mr Temporary Chairman Brandis. That is a good thing. I was very interested to read about those processes in the Sydney Morning Herald. I never understand what happens in the government party
room—I do not pretend to—and I really have to depend on the Sydney Morning Herald to provide me with all that sort of information. I always find it hard enough to understand what happens in the Labor Party, let alone start to understand what happens in the Liberal Party room. I was pleased that Mr Rudock got rolled on those issues. I am pleased that we have been able to focus this bill on the areas where we need to fix up the identified loopholes, the identified flaws—albeit small in number. That is the responsibility of this chamber.

In relation to the specific matter that is currently before the chair, this part of the bill is basically a very technical amendment to the act. It removes any doubt about the ability of the prescribed authority to give directions consistent with questioning warrants, including in relation to detention. This does not affect the powers of the prescribed authority. I consider it an absolutely unremarkable provision in this legislation. It will have the support of the opposition.

Senator BROWN (Tasmania) (4.03 p.m.)—There we have it from Labor: this is technical. In effect, Labor are saying: ‘Don’t worry. Labor will join with the Howard government in putting this legislation through. It removes any doubt about the ability of the prescribed authority to give directions consistent with questioning warrants, including in relation to detention. This does not affect the powers of the prescribed authority. I consider it an absolutely unremarkable provision in this legislation. It will have the support of the opposition.

At least one of the seven men raided by armed police and ASIO on suspicion of being linked to al-Qa’ida suspect Willie Brigitte was detained and questioned this week under new national anti-terrorism laws.

The questioning of the suspect marks the first time ASIO has used its contentious anti-terror powers which were introduced in July this year in the wake of the Bali bombing.

The man was taken to the Australian Crime Commission offices in Sydney’s CBD for questioning in two eight-hour sessions about his connections to Brigitte, who was deported to France last month.

Let me set out the difference between this reporting on ASIO detention and questioning and what will obtain after this Labor-Liberal bill goes through. Both these journalists will face five years in jail. That is the difference. This report in the Australian is illegal under this piece of legislation because it is reporting on an operational matter for ASIO. And Senator Faulkner says that is technical that these people will face five years jail for reporting to the Australian people what is happening in these circumstances! It is not technical; it is an abuse of the rights of Australians and the rights of the media to report on what is happening as far as our secret service agents are concerned. We are not talking here about matters of national security; we are talking about the rights and liberties of this nation which we are defending. And Labor says that that is all right—nothing has changed; it is technical.

Three days later on ABC radio, on the topic ‘Question about extent of ASIO powers’, reporter David Hardaker said:

To terror at home now, or at least allegations of it anyway. The intelligence agency, ASIO, has begun questioning people who knew French terror suspect, Willie Brigitte, before he was deported from Australia last month.
Well, David Hardaker, you face five years in jail for that after this legislation goes through. He went on to say:

The Attorney-General, Philip Ruddock, has argued that the Brigitte case demonstrates a need to toughen ASIO’s powers ...

So there is the Attorney-General, Mr Ruddock, says this is a toughening of the laws. Technical my foot! What a specious argument from Labor. The report of Mr Ruddock’s argument goes on:

... in its investigation so far, there’s no evidence ASIO has yet used the full limits of its existing powers, which allow the organisation to detain people for up to a week at a time to obtain crucial information.

Matt Brown then reports from Canberra:

ASIO has started to use its new powers on those who knew Willy Brigitte before he was deported to France.

Matt Brown, go to jail! He would get up to five years jail for that report on the ABC after this legislation goes through—and Labor calls it technical.

Senator Robert Ray—Brigitte was never ever detained or questioned. What is the problem?

Senator BROWN—The difficulty, Senator Ray, is, in the situation where the ABC or the Australian is reporting exactly in this fashion on a person who is being held and questioned by ASIO, they will go to jail.

Senator Robert Ray—Which Brigitte wasn’t.

Senator BROWN—Senator Ray, if we are going to get into an argument of exclusion by the Labor Party where they say, ‘ASIO is not going to detain people and question them under this legislation, and therefore we need not worry about it’—okay, give us that assurance. But we know that is going to happen, and when it does these journalists, for reporting in this fashion, go to jail. They face five years jail. Labor is endorsing that and saying it is technical.

That is the case as far as journalists are concerned. But now we have to ask: what about other citizens? The fact is, for simply reading those reports on people being questioned by ASIO and talking about them to other people, the citizens of Australia, whoever they are, would face the same jail term because they would be reporting on an operational matter involving ASIO. When it gets to parliamentarians or people giving submissions to parliamentary committees, we have the big question mark. Does this legislation infringe on privilege? What I want to know from the minister and from the government and from the, in this case, acolyte Labor Party is: what is your undertaking that this legislation will not, in future, advance any claim that these secrecy provisions affect the proceedings of parliament, including committees? Chair, I am asking the minister to listen to this because it is a fundamental question. Minister Ellison has had forewarning of the question, which is: will the government give an ironclad undertaking that this legislation and its secrecy provisions will not be used to affect any of the proceedings of parliament, including the committees?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.10 p.m.)—Please excuse the fact that I am standing in for Senator Ellison who has taken the opportunity to fly back to Perth. I will be handling the remainder of this bill. I am advised that the proposed secrecy provisions will not affect, in any way, the operation of parliamentary privilege. Parliamentary privilege will normally not be qualified by a statutory provision except where that is expressly stated, which it of course is not here. A general statutory secrecy provision does not apply to disclosure of information in parliament or any of its committees unless the
provision is framed to have such an application.

Senator BROWN (Tasmania) (4.11 p.m.)—I want to go a step further in my implied question. I would like an assurance from the government that it will not so use these secrecy provisions at any future time, or allow these secrecy provisions to be used at any future time, to question the proceedings of parliament.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.11 p.m.)—I am not sure that I can say any more than that. These secrecy provisions cannot override or affect in any way parliamentary privilege. Only parliament itself, through a statutory provision, can do that, and there is no such statutory provision proposed here, so there is no way in which these amendments can affect the normal operation of parliamentary privilege.

Senator ROBERT RAY (Victoria) (4.12 p.m.)—This particular matter was raised in one of the parliamentary inquiries. In fact, there are a couple of those officials sitting next to Senator Minchin now. I did raise the matter of the effect of any of this legislation on parliamentary privilege. I found the explanation at the time to be fairly thorough and fairly convincing—I do not think Senator Brown has a case here—but I did ask them to go back and look at it, and I think they did and they have not found a problem with it. I am speaking now as a member of the joint intelligence committee not as chairman of the Privileges Committee. But if I want to put that hat on, too, I cannot make any reading of this act that it would so impinge on parliamentary privilege.

Senator BROWN (Tasmania) (4.12 p.m.)—The act provides that people who divulge information about operational matters regarding people being detained by ASIO face five years jail. That is a very serious impediment to people coming forward and giving information, for example to parliamentary inquiries through the committee system. I hear what the government is saying. I do not know that Senator Ray understands the importance of this.

Senator Robert Ray—Thank you for that patronising remark. You are just so superior.

Senator BROWN—Well, we have got some similarities in our natures, apparently, Senator Ray.

Senator Robert Ray—You are proud of your humility, aren’t you?

Senator BROWN—I will not learn it from you, Senator Ray. That is one thing.

The TEMPORARY CHAIRMAN (Senator Brandis)—Senator Ray! Senator Brown, stick to the point.

Senator BROWN—I would remind you, Temporary Chair, that interjections are disorderly.

The TEMPORARY CHAIRMAN—I have called Senator Ray to order and I am asking you to return to your point.

Senator BROWN—And that is what I am about to do. The point here is that it is obvious to anybody who uses logic that, if they potentially face a five-year jail sentence for passing on information they have about people who have been detained by ASIO, it is inherently going to deter them from approaching committees or giving information to parliamentary inquiries. There is nothing we can do to overcome that; it is there. The question of whether people, once they have made an approach to a committee or to a parliamentarian to give information, could be deterred deliberately in this fashion is one that I have asked the government about, and the government has given its reply.

Question negatived.
Senator GREIG (Western Australia)  (4.15 p.m.)—I move Democrat amendment (2) on sheet 3247 revised:
(R2) Schedule 1, item 10, page 8 (line 24) to page 9 (line 4), omit subsection (3), substitute:
(3) The fault element applying to paragraphs (1)(c) and (2)(c) is knowledge or intention.

This amendment goes a little way to addressing concerns we have in relation to the non-disclosure provisions that are proposed by the government. The Democrats accept that there is a need for some kind of non-disclosure provisions in the bill. However, we believe that what the government is proposing is fraught with some danger. During my speech on the second reading I spoke at length about the proposed secondary disclosure provisions and the implications that these will have on the ability of the media, human rights organisations and others to keep the government accountable in the exercise of its powers under the bill. Perhaps the most concerning aspect of these provisions is the broad, and I think ambiguous, definition of operational information. We Democrats are concerned that Australians who become aware of operational information as a result of a warrant under the regime will have difficulty identifying what is operational information and what is not.

Even those who have been detained by ASIO and have the benefit of having their obligations clearly explained to them by the prescribed authority could have some difficulty identifying what is operational information and what is not, yet strict liability applies to such people.

We believe that the mental element for both primary and secondary disclosure has been set too high. Given that this disclosure offence gives rise to a penalty of five years imprisonment, it is important in our view that criminal liability applies only to the disclosure of information where a person knows what is operational information. Under the government’s proposals, we believe that there is a risk that innocent people may be convicted and sentenced to imprisonment for offences that they never intended to commit or perhaps did not even realise they were committing. It is imperative that knowledge is the mental element that is required to be established in relation to these offences. Thus we have moved this amendment.

Senator BROWN (Tasmania)  (4.18 p.m.)—As with the last amendment, the Greens support this one.

Question negatived.

Senator BROWN (Tasmania)  (4.18 p.m.)—I move Greens amendment (R2A) on sheet 3245 revised 2:
(R2A) Schedule 1, item 10, page 9 (after line 31), after paragraph (a) of the definition of permitted disclosure, insert:
(ab) a disclosure which serves the public interest;

This is an amendment to add to the matters allowable for disclosure in the public interest. The reason the Greens are putting this amendment forward is that we believe there is a public interest in this complicated matter. If we believe in our democratic system, the matter of public interest should ultimately be tested in the courts. I am not going to go...
through all the court rulings there have been on the matter, but they indicate very clearly that the matters we are dealing with today ought to come within that ambit. We ought to be defending the public interest here.

The question is: what is the balance between ASIO—which we have learnt today has called upon the parliament to pass this legislation; it wants enhanced powers for itself—and the public interest, which is to know what ASIO is doing? On the one hand, ASIO says, ‘These enhanced powers are to prevent anything being said about what we are doing when we question citizens who are innocent or otherwise.’ The public interest, very clearly established, is that the public has a right to know what secret service agents are doing when their behaviour moves outside that which is required to essentially protect the country. None of us is foolish enough to believe—particularly in the political climate we have at the moment—that secret agencies do not, and will not be tempted to, trespass outside what is expected of them by the people they serve. There is a public interest here which is served by the public’s right to know. For example, were ASIO to trespass outside its right to know through the media about Mr Brigitte’s friends being questioned, this legislation—in the wake of this legislation—threatens journalists, politicians and lawyers involved in revealing any information to the public with five years in jail. This is no technical matter. This is a very serious truncating of time honoured freedoms and checks and balances in this country of ours. This is an erosion of liberty and the defence of liberty and the right of the people to know. Information is fundamental to a functioning democracy. When you erode that information base, you erode democracy. This legislation makes a very serious erosion indeed.

The argument that the Greens are putting forward here is that in this area let the public interest be supreme. The public interest is between its security as defended by ASIO and on the other hand its right to know as a bulwark of democracy. That is the public interest: it is what serves the public best out of these two competing factors. Without this clause, that right of the public to know is completely taken away in the circumstances in which ASIO wants to operate secretly, detaining people, including innocent people, for up to seven days and that information being kept secret. Even if ASIO acts illegally and detains people who were below the legal age of 16 under this legislation or in some other way infringes on the rights of people, that cannot be reported or spoken about in public without the persons involved in discussing that illegality facing five years in jail under this legislation. So it is the public interest that we in parliament are charged to uphold, and this Greens’ amendment says, ‘Let us insert a public interest clause into the legislation under the heading of committed disclosure.’ That is an essential test of whether this legislation is really serving the interests of this country.

Senator ROBERT RAY (Victoria) (4.23 p.m.)—One point raised by Senator Brown should be responded to by Senator Minchin, the very last point: is it possible to report an illegal act by ASIO where someone is detained outside the powers of the legislation? He has asked a legitimate question there and you may ponder on that for a moment, Minister, and give him an answer.

What we have had here from Senator Brown is just another repetitious statement of loose with the truth. ‘Innocent people can be picked up and detained and questioned,’ as though that is all it was, as though there were no safeguards and no descriptions on
what grounds and for what purpose these people can be questioned or can be detained for questioning. Let us go back to it. The first step is that you need the Director-General of ASIO to want to do this, to evaluate this and to recommend it. Then it has to be evaluated and recommended by the Attorney-General. Then you have to go and get a warrant from an appropriately qualified person, and we remember all the debates about this: how we made it more and more confined, with more and more safeguards in that regard.

Then, once the questioning starts, it has to be by a prescribed authority with a retired independent judge there to supervise some of the rights that Senator Brown automatically assumes will be impinged upon. They are now allowed legal representation. Of course they should have—Senator Brown and I agree on that. The government did not for a long while. Also the Inspector-General of Intelligence and Security can be present through all this questioning as another independent person. There is judicial review of these particular matters. It is not a question of them just going out into the middle of the street and pulling the first person in, as Senator Brown seems to imply, and questioning them over seven days for a total of 24 hours. That simply does not happen; it is not that capricious.

I hate this expression: the public has a right to know. In most things that is true, but not in security matters necessarily. But I tell you what else the public has a right to: it has a right to its own safety and security. If people have knowledge of potential terrorist acts, they are entitled to be protected from them. Our job as parliamentarians is to make sure that in protecting them from that and in taking the necessary acts we provide the necessary civil liberty safeguards. Three or four days ago Senator Brown was in here saying, ‘This is Mr Ruddock’s wedge, this is coming from the government,’ where all along we know that these particular changes, for good or bad, came from ASIO themselves. We could have a long dialogue in here about the potentialities of wedge politics, and we know it well in the Labor Party. Senator Brown points to the possibility of us being wedged from the right, and we have suffered from that. I tell you what: we have suffered as much from being wedged from an opportunist Left at the same time. We can be wedged from the left, and so can the Democrats. They have to live with being opportunistically flanked day in, day out.

On this question of secrecy, the public have a right to know in general and they have the right to know specifically that there are the necessary protections in the legislation that achieve balance. So let us not have any more about people just being pulled off the street capriciously with no suspicion as to what guilt they might have or what knowledge they might have. In that way this bill does differ from nearly every other set of legislation this parliament has ever carried. What were the necessary norms of civil liberties might depend, Senator Brown, on whether you were on the 85th floor or the fifth floor of the World Trade Centre.

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (4.28 p.m.)—I should say that our party is founded on the concept of individual liberty and it is something that is very important to us. We understand that, Senator Brown, and we do not like to do anything to unduly or unnecessarily infringe that. But, as I think Senator Ray is really saying, individual liberty can only be provided under appropriate national security. Without national security there is certainly no liberty. All these things involve trying to find that right balance. After September 11, I think all democratic societies are wrestling with this. We think these are appropriate mechanisms.
In relation to the specific issue which Senator Ray has suggested I might want to respond to, as he pointed out, we should keep in mind the role of the Inspector-General of Intelligence and Security in all of this. I remind Senator Brown that the inspector-general is appointed for a fixed term, cannot be dismissed by the government, operates entirely independently of ASIO, has extensive investigative powers and really does operate as a standing royal commission with respect to monitoring of investigation into any complaints about the propriety and legality of ASIO’s actions. As I am advised, there is absolutely no limitation on the public reporting of a finding of invalid activity by ASIO.

Senator BROWN (Tasmania) (4.29 p.m.)—What does ‘public reporting of a finding of an invalid action by ASIO’ mean? Is the minister saying that a report of a person being held for a week in detention for questioning under the ASIO legislation, who is 15—and therefore being held illegally—is okay, but if the person is 16, it isn’t?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.30 p.m.)—But there are circumstances that are not hard to envisage: the information upon which the warrant is based could be incorrect; the information is available to those outside the authorising process; and the judicial officer involved is not acquainted with that. They have to go on the best information they have. We are dealing with a secret situation here. However, let me come back to the core of this amendment: we should test this legislation under the question of public interest. Nothing could be more just than that. Nothing is more central to a democratic system than that. And the denial of this amendment by the government and the opposition is a very clear indication that the public interest is being given up here to the wishes of ASIO. That is the problem.

Senator BROWN (Tasmania) (4.32 p.m.)—It is not just a matter of my judgment or anybody else’s judgment. The point I made at the outset is that it would be a matter for the courts. What the minister is saying is that the risk that the public interest would not be found to favour ASIO’s operations or the minister’s signature at some future time or the judgment of people acting in secrecy is something the government will not countenance here. What I am saying is: put a public interest test in the legislation, where there is an independent arbiter—our great judicial system—and do not simply leave it to a political decision as to whether we give away our time-honoured rights to an increasingly secret operation, given away by government and the opposition in this case and carried out by ASIO.

Senator ROBERT RAY (Victoria) (4.33 p.m.)—The difficulty here—and Senator
Minchin alluded to it—is what is the public interest? Senator Brown thinks that, for some reason, judges are the perfect people to assess that. They are certainly well qualified. My problem with that is that, by putting the public interest test in, you may encourage a lot of people to disclose these matters, thinking that it is in the public interest, then being prosecuted and then some judge finding it not to be in the public interest. Therefore, they then cop a fine or a jail term or something else. We have encouraged them by there being a lack of definition of ‘public interest’; we have left it to the judiciary; we have encouraged them and left them stranded.

Senator BROWN (Tasmania) (4.34 p.m.)—I stand by that proposition. That is what parliaments have done here in many pieces of legislation over the last century and before that elsewhere. But the opposition and the government are saying: ‘Let us not have a public interest test in the legislation. We don’t like the sound of that. We don’t stand behind that test.’ Of course, the only arbiter there is the courts. What we have here is a judicial system which is being used in secret to validate the apprehending of people for questioning, including people known to be innocent. I do not resile from having said that. We all understand there is that potential. Yet they say, ‘Let’s not have a public interest test here.’ The Greens stand very strongly behind the concept of the public interest. We believe it is absolutely essential in a dangerous piece of legislation like this, which has not been justified. There has been no practical case brought forward where this has been justified. We stand right behind a public interest test being put into this piece of legislation and that is why this amendment is there.

Question negatived.

Senator GREIG (Western Australia) (4.35 p.m.)—I move Democrat amendment (3) on sheet 3247 revised:

(3) Schedule 1, item 10, page 12 (after line 11), at the end of section 34, add:

(13) It is a defence to a prosecution for an offence under this Part if:

(a) the disclosure was made in direct compliance with a law of the Commonwealth or a law of a foreign country; and

(b) non-compliance with that law constitutes a criminal offence.

This amendment seeks to address what for us is an issue we believe has been omitted from the nondisclosure provisions of the bill. It seeks to avoid the situation where, for example, an Australian citizen has been questioned by ASIO because ASIO believes they might have some relevant information. The person subsequently travels to the US and, while there, is detained by US authorities and questioned. If they do not answer the US’s questions, they will be liable to be charged with a criminal offence and subject to a term of imprisonment. They may even have their passport seized. If they comply with the US authorities and avoid these consequences they face the dilemma, if they do answer the US’s questions, of being charged with a criminal offence and subject to five years imprisonment upon their return to Australia.

We are aware of the government’s concerns regarding this amendment, but we are not persuaded by the reasons advanced to justify the potential injustice that could arise in the absence of this Democrat amendment. I should indicate that the Democrats initially intended to amend the bill so that compliance with other laws was inserted as an additional permitted purpose. We have since considered the issues raised by the government and decided that this concern would be more appropriately addressed by way of a defence.
This means that a prohibited disclosure which is made in direct compliance with another law, whether in Australia or overseas, will remain a prohibited disclosure. However, if the government attempts to prosecute a person who has made a disclosure under such circumstances, that person will have a defence available to them. This is an important safeguard, particularly given that the questioning and detention regime applies to innocent Australians who are not suspected of any involvement in terrorism.

Question negatived.

Senator BROWN (Tasmania) (4.37 p.m.)—I move Greens amendment (R4) on sheet 3245:

(R4) Schedule 1, page 12 (after line 11), at the end of section 34VAA, add:

Media organisations

(13) An act done, or practice engaged in, by a media organisation is exempt for the purposes of this section if the act done, or practice engaged in, is:

(a) by the organisation in the course of journalism;

(b) at a time when the organisation is publicly committed to observe standards that:

(i) adhere to an industry code of practice; and

(ii) have been published in writing by the organisation or a person or body representing a class of media organisations.

(c) not a threat to national security.

(13A) For the purposes of subsection (13), media organisation means an organisation and or a journalist whose activities consist of or include the collection, preparation for dissemination or dissemination of the following material for the purpose of making it available to the public:

(a) material having the character of news, current affairs, information or a like documentary; or

(b) material consisting of commentary or opinion on, or analysis of, news, current affairs, information or a documentary.

This very important amendment is to put a provision into the bill to protect the interests of the media in the way I have been arguing. The amendment goes to some length to define what is a dinkum media organisation, journalist or reporting. It also has that very important caveat that the reporting must not be a threat to national security. So, once again, inherently this is a public interest test that will need to be passed. But it is saying that where there is not a threat to national security: for goodness sake! We cannot have journalists in this country facing five year jail terms because they report to the public what is going on in this democracy of ours. How can the government not support an amendment which says where the national security is not infringed the media should be able to report. This is fundamental to democracy.

How can the opposition claim this is a technical matter—that journalists, in the course of their duty reporting to the Australian public what is happening in the realms of ASIO, should face a five-year jail sentence for simply making a report which does not threaten security? It is commonsense that this amendment should pass. It is very poor quality politics that this amendment is being opposed. How can the government not support an amendment which says where the national security is not infringed the media should be able to report. This is fundamental to democracy.

How can the opposition claim this is a technical matter—that journalists, in the course of their duty reporting to the Australian public what is happening in the realms of ASIO, should face a five-year jail sentence for simply making a report which does not threaten security? It is commonsense that this amendment should pass. It is very poor quality politics that this amendment is being opposed. This goes to the heart of our democratic system and its safeguards—and the fourth estate. I reiterate that information is the currency of democracy. When you attack the right of the flow of information, you attack democracy itself. You cannot have a democracy in which information is truncated. Obviously, reporting on intelligence
agencies has its limitations, but this legislation, where people are questioned about matters of terrorism, puts a blanket ban on that. We have never seen that before. Even where the national security is not threatened by the reporting, the ban stays.

This is very dangerous legislation. This is a correcting amendment that the Greens are putting forward and it should be supported. Above all, it should be supported by the Labor Party because it is a fundamental matter that all parties in this parliament essentially agree with in their make-up and philosophy. I cannot believe today that on spurious grounds of urgency we are being forced to allow this matter to be arbitrated by nobody else but ASIO—that is where the request came from—without a proper public debate and with both the big parties having said no to a reference to a committee inquiry so there might be public input on matters as fundamental as this to our democracy. It is incredible that we have a situation where we are not getting a debate in which the public, the legal profession and non-government organisations ranging from Amnesty and Liberty to a whole number of organisations whose interest is in this arena are involved. No, that has been cut out by a combined vote of the big parties.

Let me reiterate that there has been no case made for urgency—except that it is said to be urgent that this matter pass the parliament today. There is no case for urgency. What is the situation that threatens this country in a way that this legislation must pass this afternoon? There is none. There is a political impulse, but there is no urgency for the nation, and the danger, of course, is that the nation loses as a result of this. That is why the Greens are vigorously defending this amendment in the parliament today.

Senator ROBERT RAY (Victoria) (4.44 p.m.)—The first question you have to ask is: why would we want to exempt journalists? What makes journalists, on security issues, a protected species? Why are they in some way morally or vocationally superior to every other Australian? You can go through all the platitudes in the world but you still have to ask the basic question of why journalists have to be exempt. I suppose Senator Brown would say that the public has a right to know. That is a catch-all excuse for any amount of scandal and trash in newspapers. We live with that day in and day out, but I believe we have to make an exception in national security issues. We did it all last century. Sometimes we have done it well; sometimes we have done it badly. Sometimes in wartime we have done it exceptionally well, although we have made mistakes and that has to be admitted. Nevertheless, it should be an enduring principle.

One of the ways we have done it traditionally is by D notices, where certain matters, voluntarily agreed to by newspapers, are not published—for instance, the names of ASIS officers. Did Senator Brown say that the public has a right to know about that? Did he object to that clause? He may have, when the bill was before the parliament—my memory cannot dredge that up; he might like to confirm that—when ASIS was given a statutory basis two years ago. Did the public have a right to know then? Can journalists really have a right to publish the names of ASIS officers who serve overseas? That would be signing their death warrant. It is not an immutable principle. The real question is: where do you draw the line. That is what the parliament is about to do today.

Let us follow Senator Brown’s logic. Let us say that I have information that I would like to disclose about an interview that I had with ASIO. I am not going to walk out on the street and blab it everywhere. I am going to give it to a journalist. Under Senator Brown’s regime, that journalist is then pro-
tected. Guess what? So am I, because then the journalist will refuse to reveal his or her source. Therefore, every individual who wants the public to know the operational matters covered in that interview or in the period of the 28-day warrant, whichever you want to apply, could always have that in the public domain because journalists would be protected under Senator Brown’s regime, and journalists’ ethics detail that they cannot reveal the name of someone who was entitled to be prosecuted by giving them the information.

In every case under this legislation, it is fair to assume that they have to be given the information. There is really no other way that they can find out. Either it would be someone who is involved in the prescribed authority—someone in ASIO—or the person being interviewed may have been told. If Senator Brown’s amendment to protect the fourth estate were to be entertained, we might as well scrap all the provisions here—probably his ultimate intention. Earlier, Senator Brown accused the Labor Party of being the acolyte of the coalition on these issues. I am glad he did not describe us as an opportunistic crawler to the fourth estate because I would have found that offensive. I certainly would not accuse him of that because he would find it offensive, no matter how true it is.

Senator Brown talks about spurious grounds for urgency and where this debate is listed. I do not know the background to that. I would have thought that this debate was listed last because the Manager of Government Business in the Senate would have known that there are going to be a whole range of cheap opportunistic interventions in this particular debate. Why not put it on last so that we do not blow out the rest of the program? I assume that is what they have done. Certainly the Manager of Government Business in the Senate has not told me—and at this point he is about 10,000 feet over Canberra and I cannot check with him.

Senator Brown makes the point that these matters should have gone to a committee. If we had had a thorough committee inquiry and had concurred on this legislation, would that have influenced Senator Brown’s decision as to where to vote on these things? No, the prejudices are already ingrained. The decisions are already made by him. I respect that. In my view, an inquiry would only have been a form of duplicitous group therapy on this particular piece of very technical legislation. We would have just been wasting time.

The final point is that Senator Brown says that there is no case for urgency on this legislation. In part he is correct, but there is no case for lack of urgency either. Senator Brown would have preferred to let this legislation lie over until February so that the old paranoia of emails could roll in and he would feel good, but it would not alter anything. There may be some case for urgency, I would have thought, with that section on passports where the legislation is deficient. In its initial form, I think this legislation was the worst piece of legislation ever to enter this federal parliament. I could be wrong on that but I thought it was appalling. It got set aside, then it got reintroduced and eventually a whole range of amendments to it were moved. But because we are concentrating on the big pictures—whether you could take a 10-year-old boy off the street and detain him forever, with no seven-day limit, without even telling his parents, or you could pull a 12-year-old Muslim girl off the street and strip-search her—it did not occur to us to look at the technicality of passports. And the government did not look at the technicality of passports because they were too busy...
thinking about whether, potentially, they should wedge us on these other issues. However, after all the argy-bargy, fortunately we came to a balanced agreement. It does not matter what the Attorney-General might say—falling in love with the French system. It is never going to come in here and it is not reflected in this legislation.

Of course our initial worry when he started flirting with three years detention in regard to Brigitte and all the other stuff was that it would appear in this legislation. Then we found out that no, this legislation had all been motivated from ideas and suggestions coming out of ASIO itself. The further we investigated, the less we saw the political wedge in this. This government is trying to amend an act to satisfy the technical requirements that ASIO has suggested. To say that for some reason—to get a few cheap points in the gallery—we will protect journalists on this is absolute arrant nonsense. They are not a breed above every other Australian, nor should they be below it. With the responsibilities they have in reporting, they also have to be cognisant of the fact that national security is not just there as some sort of secrecy. The national security issue here is to prevent terrorism that affects everyone. That is the core of the issue. They do not have a licence to endanger other people’s lives, nor should they be allowed to endanger other people’s lives simply to get a scoop or to get the ratings up of some cheap evening current affairs program or some tabloid newspaper so that they get the jump on everyone else. That is not about the public right to know; that is about journalistic careerism. We in this parliament should not be giving them licence to do that.

Senator BROWN (Tasmania) (4.52 p.m.)—What an extraordinary submission that was—

Senator Boswell—I thought it made a lot of sense.

Senator BROWN—Senator Boswell agrees with Senator Ray. When it comes to scandal and whatever the other thing was that Senator Ray attributed to journalists, I would have thought that journalists in that neck of the woods would be the ones defending this piece of legislation. I have been as critical of the fourth estate as anybody, but let me say here that it is an absolutely essential component of a working democracy, and journalism is an honourable profession.

Senator Robert Ray interjecting—

Senator BROWN—I disagree. We are absolutely reliant upon journalism, whether we like it or not, and upon the media organisations we have, whether we like them or not, to ensure that the information which is basic to our democracy flows. When you cut off and threaten with imprisonment journalists who use the right to publish information which is not against the national interest—that is what this clause says: information which does not infringe on the national interest—then we are moving into dangerous waters which are more akin to a police state than a democracy. I do not use those words lightly. We are always faced with harrowing situations of determining how we balance the interests of keeping society safe with the interests of keeping society open, but I have put forward a public interest test here which does cover all other components and all other professions in our society and which parallels the right under this amendment of journalists to report. But Labor turned that down and supported the government in doing so, and now it is doing the same insofar as this specific, confined amendment to ensure that journalists have a right to report where the public interest is not infringed.

It is a very black day for the health of our democracy when both the major parties—the
government and alternative government—in this place turn down such an amendment. I cannot go beyond that. There is no argument that is going to convince the opposition or the government in this matter, but they are wrong. This is a very serious erosion of a fundamental right of the flow of information in our democracy where that flow is not against the security of the nation. Today should be a defining day where the Latham opposition says, ‘No, we have a different point of view to the Howard government.’ But instead it is left to the Greens and the Democrats to be putting a point of view and, more than that, to be arguing for an amendment to this legislation which is consistent with the basic freedoms in our democracy. We do not have the numbers, but I can assure you that we will continue to fight against odious legislation which comes into this place which, without the warrant of national security, infringes upon matters which are absolutely essential to the health of our nation as a liberal and open democracy.

Senator Robert Ray (Victoria) (4.56 p.m.)—I just want to say one thing. It will not totally comfort Senator Brown, but this legislation is still operating under a sunset clause. I think some of the things you have said, even though I disagree with them, lead me to the conclusion that we were both right at least to put a sunset clause in this legislation. We have a different perspective on how it is going to operate—we have got to evaluate that in the Joint Committee on ASIO, ASIS and DSD in two years time—but, if you hold those views, you must at least take some comfort that the matter will be reviewed and will be subject to a sunset clause and that this entire legislation will have to come back into this chamber in almost two years time if it is to continue.

Senator Brown (Tasmania) (4.56 p.m.)—I am glad that is there, and that is one of the reasons the Greens put forward and supported that amendment along with Labor and the Democrats at an earlier time. But you do not allow dangerous legislation to be in operation with the hope that, if it does go wrong, you will be able to pick it up in a review period. You remove the dangers first. That is what this amendment does, and that is why it should be supported.

Senator Greig (Western Australia) (4.57 p.m.)—I want to ask a question of the minister. On page 21 of today’s Daily Telegraph there is an article entitled ‘Terror law: first charge’ and it relates to a charge under New South Wales terror laws in an article by Charles Miranda. The opening paragraphs say the following:

A Sydney man could face life in jail after being charged with “making preparations for a terrorist attack”.

Zeky Zak Mallah, 20, faced Bankstown Local Court yesterday as the first person to be charged under Australia’s new counter-terrorism laws.

Mallah was arrested at a reserve near his Connell Park bedsit home about 6pm on Wednesday by NSW counter terrorist co-ordination command officers and Australian Federal Police, on advice from ASIO.

The question I have—it is not clear from my initial reading of the article—seeks to clarify this: is this a situation where somebody is being charged under the federal law or is it a situation where they are being charged under state law? Do we not then have a double standard where the operations or the operational provisions of ASIO can be commented on or pointed to in an article in reference to state laws and yet we seek a secrecy provision on that within the federal law? To put it another way, is there not an inconsistency here where it can be reported that ASIO has alerted authorities to the detention and possi-
ble prosecution of someone under state laws but not under Commonwealth law?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.59 p.m.)—In response to Senator Greig’s query, I am advised that the man has been charged, as you have reported, and the charge is being dealt with before the court. The charge was made under section 101.6 of the Criminal Code Act, which is a federal act, not a state act.

Senator BROWN (Tasmania) (4.59 p.m.)—Let me expand on that: Mr Mallah has been arrested and detained. Let us say that he is being questioned by ASIO. I might ask the minister if he is, and we can take it from there.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.00 p.m.)—This case and this charge have nothing to do with the issues before us. This is an entirely separate piece of legislation. Mr Mallah is accused of having committed an offence under a particular section of a completely different piece of legislation.

Senator BROWN (Tasmania) (5.00 p.m.)—But the question I am asking is: has he or any of the associates of Mr Brigitte been questioned under the legislation we are talking about?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.00 p.m.)—I think Senator Brown knows that I simply cannot comment on that.

Senator BROWN (Tasmania) (5.00 p.m.)—Let me make the supposition that that is the case, and a journalist gets to know about it. At the moment they can report it. I ask the minister: is it not true that in two weeks time, if the Governor-General’s signature is on this piece of legislation, they will face five years for doing just that?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.01 p.m.)—I am not in a position to comment on a hypothetical. If Senator Brown wants to put a factual position to us, I am happy to comment to the extent of my ability. But I am not going to comment on hypotheticals.

Senator ROBERT RAY (Victoria) (5.01 p.m.)—Senator Brown has said that the journalist will get five years. Can you minister confirm that we do not have mandatory sentencing and that it is up to five years?

Senator BROWN (Tasmania) (5.01 p.m.)—I said ‘faces five years’, and that means the same thing. Senator Ray was distracted by a side conversation. All law developed in this parliament is about the hypothetical future situation. It applies to people in the future, except where we have retrospective clauses. The only way we can debate it is by asking about such hypothetical situations. But I am not going to delay this. Let me make this absolutely clear. Journalists today, in this great country of ours, can report on the actions of ASIO in detaining people for up to a week in secret on matters relating to terrorism. After the passage of this legislation, journalists, politicians or anybody else who talks about these matters will face a five-year jail sentence. That is what is wrong with this legislation. The world changes after the Governor-General’s signature goes on this legislation, because those draconian jail sentences are faced by people who want to discuss the activities of ASIO in this area. The amendments of the Greens, which would have safeguarded us from the blanket ban and draconian jail sentences, would have ensured that public discussion on these matters was not at the expense of national security.

That is what is wrong here. After this legislation goes through, where there are mat-
ters that do not infringe on national security and are reported, members of the public, members of the judiciary, members of parliament outside this place and certainly journalists will face five-year jail sentences. That is wrong. We are not talking about the defence of national security here; we are talking about operational matters outside that. But Labor has combined with the coalition to say, ‘Even where the nation’s security is not at stake, you report on ASIO and you will face a five-year jail sentence.’ That has no place in our Australian democracy.

Senator GREIG (Western Australia) (5.04 p.m.)—Can the minister confirm whether, if the proposed laws before us were in place now, it is the case that the article which appears in today’s Daily Telegraph could not be there? Could the journalist, Charles Miranda, face prosecution for the detail of his article? Indeed, could Premier Bob Carr, who commented on the case and made specific reference to Commonwealth agencies and their role in this, also face criminal prosecution?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.04 p.m.)—The amendments we are looking at today will not affect in any way whatsoever the case that has been reported in the Daily Telegraph. It will have no effect on that whatsoever.

Senator BROWN (Tasmania) (5.04 p.m.)—To make it clear, is the minister saying that had this legislation passed a month ago it would not affect that reporting? Would that report be legal?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.05 p.m.)—I do not have the report in front of me but, taking Senator Greig’s words at face value, the report of someone being charged and appearing in court for an alleged offence under section 101.6 of the Criminal Code Act would not have been affected, as I am advised, if this legislation had passed a month ago.

Senator BROWN (Tasmania) (5.06 p.m.)—If the report on the ASIO detention and questioning of associates of Mr Brigitte is factual, would the same apply?

Senator Minchin—I think Senator Brown knows that I am not going to comment on ASIO operations.

Senator BROWN—Can you confirm that journalists who reported in that case would have faced a five-year jail sentence? That is what the minister’s answer means to me.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.06 p.m.)—As Senator Ray so eloquently put it, the point of these amendments is such that the media will not be placed above the law. We are proposing amendments to enable ASIO to more effectively do its job of preserving our national security and, therefore, our liberty. We are not prepared to accept amendments which effectively place the media above the laws which we are proposing to put in place, and which have the support of the government and the opposition, to ensure that ASIO can do its job.

Senator BROWN (Tasmania) (5.07 p.m.)—Let me reiterate that, had this legislation gone through a month ago and had the reporting we have seen in the press and heard on radio occurred, there would be at least four journalists that I know of with the potential to be charged before the courts and face a five-year jail sentence. What has happened in the reportage we have seen from those journalists that has threatened the security of this country? Nothing. In real and factual terms, this is the danger of this legislation. It is easy to scoff at the fourth estate, at the media, at journalists, but this is very seri-
ous stuff. It is a pity Labor did not take it seriously.

Question negatived.

Senator BROWN (Tasmania) (5.08 p.m.)—The Australian Greens oppose schedule 1, part 4 in the following terms:

(3) Schedule 1, Part 4, page 7 (line 2) to page 12 (line 14), TO BE OPPOSED.

This opposes the whole of the secrecy provisions here, and I am not going to traverse the same arguments. They hold, and have been strengthened by the debate we have had this afternoon.

The TEMPORARY CHAIRMAN—The question is that part 4 in schedule 1 stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.10 p.m.)—I move:

That this bill be now read a third time.

Senator BROWN (Tasmania) (5.10 p.m.)—The Greens oppose this bill.

Senator GREIG (Western Australia) (5.10 p.m.)—I have to say that, having considered the legislation as it evolved oh so quickly over the last few days, I do not have the same fears and concerns as I did in the early stages, and it is nowhere near like the alarming and outrageous legislation of the original bill we were dealing with last year. Notwithstanding that, there are key areas in the bill with which we Democrats have some significant concerns. On the basis that our amendments to address those were not successful, we cannot support the bill.

I would say to Senator Ray, though, who posed the notion that a committee reference would have been a waste of time and would have been seen as paranoid—I think that was the word he used—in respect of submissions, or emails in particular: I agree with you, Senator, but I make the point that there are many people in the community who rightly or wrongly have anxious concerns, perhaps paranoid concerns, false concerns or misunderstandings. One of the things we can do through committee processes is to let those people be heard. They may not always be right, but they can be shown to be involved and have their say; they can feel that they are being listened to. The great difficulty I have in part with this legislation is the fact that because it is being rushed through, the last bill on the last day of the last sitting of the year, we feed that paranoia. We give people every reason to believe that parliament is not doing the right thing by them. In doing that, the community can lose faith in the process of legislation and faith in the trust that they place in us to do the right thing.

Senator ROBERT RAY (Victoria) (5.12 p.m.)—It is quite clear from the debate that the opposition supported this legislation. Wherever possible we take a bipartisan approach to national security issues and issues to do with terrorism. What is probably the least defined in this country is what bipartisanship is. It is not about agreeing on all the details; it is about agreeing on the intent. I just hope now that the government will bed down this ASIO legislation and get it to work. I hope there are no more technical deficiencies. I hope there are no more moves to say that, having gone this far, this is our last territorial demand, and next February a whole range of new territorial demands are put on us. We would always look at those on their merits. We cannot give a commitment that we will always pass further amendments to this bill that might be seen, not as we saw in this case of filling in potholes and ironing...
out bumps, as dramatically changing the direction of this piece of legislation.

When the annual report comes out, we will start to get a sense of how often this legislation is being used. I am sure that the various safeguards put in the previous bill—and I do not think they have been inhibited at all in this particular bill—will in fact lead to proper outcomes. What we are about here is a balance of rights. We are concerned with protecting citizens’ rights, but their rights are to be protected from an arbitrary intervention of the state without proper protections. But they are also entitled to be protected, to be able to go down to the local shop and not have a bomb go off in a garbage can. They are entitled to go on holiday up to Surfers Paradise or wherever else and to sit in the foyer of a hotel not expecting a truck bomb to go off outside because someone has picked on innocent victims. Therein is the balance. I think this ASIO legislation has the balance.

My main reason for getting up now is to thank all the officials and advisers who have taken us through this very tough process in the last two years. It has not been easy for them. Everyone says, ‘This legislation was subject to all sorts of argy-bargy.’ It is not easy for the officials. They worked very hard when the compromises were necessary. But I will just repeat that I think we have probably come as far as we can on this. I just hope that it is not an activity that we face every six months—and I am sure Senator Greig also does not want that—that new demands are put on oppositions in this parliament.

Question agreed to.

Bill read a third time.
Senator MACKAY (Tasmania) (5.17 p.m.)—On behalf of the Labor Party, I join with Senator Minchin in thanking everybody here, particularly the clerks and the attendants and all the staff who assist us. I hope that everybody has a very happy and restful Christmas. I seek leave to incorporate Senator Faulkner’s valedictory. His sentiments are very similar—in fact, identical—to the sentiments expressed by Senator Minchin.

Leave granted.

Senator Faulkner’s incorporated speech read as follows—

On behalf of the Opposition I would like to place on record our appreciation for all of those who work so hard to keep the Senate running smoothly.

I thank the President, the Deputy President and those others that preside in the chamber. I acknowledge that it isn’t always easy keeping order in this Chamber, particularly when emotions are running high, and we all appreciate the effort that those in the President’s chair put into the task.

On behalf of the Opposition I would also like to thank the Clerk, the Deputy Clerk, the Clerks Assistant, and all those in the clerks’ offices and the Department of the Senate. I’d like particularly to thank Anne Lynch for her many years of dedication and assistance to all Senators. I’m sure I speak not only on behalf of the Opposition but on behalf of all Senators when I wish her all the best for a speedy recovery. We hope to see her back very soon.

This year has seen the departure of two of those who have given a great deal of assistance to the Senate over the years: Mike Bolton, former Secretary of the Joint House Department, and John Templeton, former Secretary of the Department of the Parliamentary Reporting Staff. Mr Bolton has been Secretary of the Joint House Department since 1986 and he was responsible for moving the whole Parliament from Old Parliament House to the current building in 1988. Those who were in Parliament in 1988 still talk about the amazing efficiency and smoothness of that transition. Mr John Templeton has been Secretary of the Department of the Parliamentary Reporting Staff since 1990. He has also been successively Acting Parliamentary Librarian and Acting Secretary of the Department of the Parliamentary Library since 1991. He has done a great deal to improve the efficiency of the Hansard, broadcasting and IT services.

So we thank the staff of the Department of the Senate, the Table Office, Hansard and the Parliamentary Library as well as the attendants, Comcar drivers, cleaners, gardeners, transport officers, those in the dining room, the security staff, the Synergy Travel staff and so many others who work in this building. Even if the media attention is usually focused only on the politicians, we know that it takes a great many people to keep the building running. I thank all those staff, and the staff of the Senate Committees as well, who work as hard as the politicians here and for a great deal less public appreciation.

I want to thank those of my colleagues here in the Senate who have worked so hard over the past year. I want to thank those who are responsible for the chamber management—Senator Ludwig, the Manager of Opposition Business in the Senate, Senator Mackay, the Opposition Whip, and her two deputy whips. They have worked very hard over the course of the year to keep things running smoothly, at least on our side of the chamber. Much of their work is not public and not visible but it is crucial to the smooth running of the Senate nonetheless, and we thank them for it.

I’d also like to thank the Deputy Leader of the Opposition in the Senate, Senator Stephen Conroy, and my other shadow ministerial colleagues here in the Senate, for their hard work throughout the year.

And I would particularly like to thank my staff, as I’m sure my colleagues would like to thank their staff. In my case, I have been ably supported throughout the year by Dy Spooner, David Williams, Colin Campbell, Anthony Sachs, Johanna Henderson, Patti Wilkins, Lenka Peraic, Jenny Bates, Sally Tate and Ashley Hogan.

On behalf of the Opposition, I’d like formally to wish Senators opposite and on the cross-benches a happy holiday and all the best—in the non-political sphere, at any rate—for the New Year.
The DEPUTY PRESIDENT (5.17 p.m.)—On behalf of the President and on my own behalf, I extend the same sentiments as expressed by the previous speakers to all the attendants, clerks and officials of this parliament. I wish them a happy and safe Christmas and a prosperous New Year.

Question agreed to.

Senate adjourned at 5.18 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Civil Aviation Act—Civil Aviation Regulations—
Exemption No. CASA EX25/2003.
Instruments Nos CASA 513/03, CASA 522/03, CASA 537/03 and CASA 538/03.

Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].
QUESTIONS ON NOTICE
The following answers to questions were circulated:

Defence: Hornet Upgrade Project
(Question No. 1665)

Senator Chris Evans asked the Minister for Defence, upon notice, on 28 July 2003:
With reference to the F/A-18 Hornet Upgrade project (Project AIR 5376) in the Defence Capability Plan:

(1) Can a description of all of the phases of this project be provided.
(2) (a) What was the original timeline for the completion of the project, including the dates for each of the phases in the project; and (b) when was the project due to be completed.
(3) (a) What was the original budget for this project; and (b) what were the individual budgets for each of the phases in the project.
(4) (a) What is the current schedule for the completion of this project; (b) what are the completion dates for each of the phases in the project; and (c) when is the project due to be completed.
(5) Has the schedule for this project changed; if so, why.
(6) How would any schedule change with this project impact on future capability.
(7) (a) What is the current budget for the project; and (b) what are the budgets for each of the phases in the project.
(8) What has been the cost of this project to date.
(9) Has the projected budget for this project increased; if so, why.

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

(1) The Hornet Upgrade project consists of three phases with a number of discrete component stages.

Phase 1 of the Hornet Upgrade modifications included new mission computers and radios, a global positioning system and new mission software for the F/A-18 fleet.

Phase 2.1 provided new radars and upgraded mission software.

Phase 2.2 is a further avionics upgrade that will increase the situational awareness of the pilot in the air combat role. It involves integration of colour cockpit displays, a digital moving map, a Link 16 data link, a helmet mounted cueing system and a new counter-measures dispensing set. This phase also provides enhanced flight simulators.

Phase 2.3 is the planned upgrade of the F/A-18 Electronic Warfare Self Protection (EWSP) comprising replacement of Radio Frequency Jammers and Radar Warning Receivers.

Phase 3 of the Hornet Upgrade addresses structural refurbishment and is divided into two stages. Phase 3.1 consists of a number of discrete repairs that are required at about half the aircraft’s planned life. Phase 3.2 involves the replacement of the airframe centre barrel and/or a number of discrete structural repairs. The modification package will be tailored for each aircraft and enable the fleet to achieve the planned withdrawal date.

(2) The table below details the Project and Phase schedules.
### PRINCIPLE SCHEDULED MILESTONES

<table>
<thead>
<tr>
<th>Phase</th>
<th>Contracted Date</th>
<th>Actual or Estimated Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Phase 1</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft modification complete</td>
<td>December 2001</td>
<td>June 2002</td>
</tr>
<tr>
<td>Commence aircraft modification</td>
<td>November 2001</td>
<td>May 2002</td>
</tr>
<tr>
<td>Aircraft modification complete</td>
<td>August 2003</td>
<td>August 2003</td>
</tr>
<tr>
<td><strong>Phase 2, Stage 2</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prime contract for Phase 2 including colour display development and production Initial Engineering Design</td>
<td>December 2003</td>
<td>December 2003</td>
</tr>
<tr>
<td>Commence fleet modification (not yet in contract)</td>
<td>TBD</td>
<td>2006</td>
</tr>
<tr>
<td>Production aircraft modification completed (not yet in contract)</td>
<td>TBD</td>
<td>2007</td>
</tr>
<tr>
<td>Not yet in contract</td>
<td>TBD</td>
<td>2007</td>
</tr>
<tr>
<td><strong>Phase 3, Stage 1</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non Recurring Engineering (NRE) contract</td>
<td>March 2004</td>
<td>March 2004</td>
</tr>
<tr>
<td>Commence production (not yet to contract)</td>
<td>TBD</td>
<td>April 2004</td>
</tr>
<tr>
<td>Production complete (not yet to contract)</td>
<td>TBD</td>
<td>2008</td>
</tr>
<tr>
<td><strong>Phase 3, Stage 2</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commence production on selected aircraft (not yet to contract)</td>
<td>TBD</td>
<td>2006</td>
</tr>
<tr>
<td>Production complete (not yet to contract)</td>
<td>TBD</td>
<td>2010</td>
</tr>
</tbody>
</table>

(3) The tables below detail original, current project approvals and expenditure to October 2003 by project phase.

**Air 5376 Phase 1**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Sm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1 initial Project Approval (December 1995 prices)</td>
<td>$140.2m</td>
</tr>
<tr>
<td>RCI approved by ACMAT-AF</td>
<td>$2.2m</td>
</tr>
<tr>
<td>RCI approved by cabinet</td>
<td>$7.1m</td>
</tr>
<tr>
<td>RCI transfer of scope from Phase 2C</td>
<td>$50.8m</td>
</tr>
<tr>
<td>RCI due to under estimation of costs</td>
<td>$28.4m</td>
</tr>
<tr>
<td>RCD</td>
<td>-$1.2m</td>
</tr>
<tr>
<td>Price and Exchange updates</td>
<td>$62.9m</td>
</tr>
<tr>
<td>Phase 1 current Project Approval (December 2003 prices)</td>
<td>$290.4m</td>
</tr>
<tr>
<td>Phase 1-expenditure to October 2003</td>
<td>$261.5m</td>
</tr>
</tbody>
</table>

**Air 5376 Phase 2**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Sm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ph 2 initial Project Approval (December 1998 prices)</td>
<td>$1300.0m</td>
</tr>
<tr>
<td>Transfer of scope from Phase 1</td>
<td>$23.9m</td>
</tr>
<tr>
<td>Transfer of simulator scope from Phase 1</td>
<td>$11.3m</td>
</tr>
<tr>
<td>RCD approved by Cabinet as part of white paper outcome</td>
<td>-$132.1m</td>
</tr>
<tr>
<td>RCD (Facilities)</td>
<td>-$0.2m</td>
</tr>
<tr>
<td>RCI for Hornet Air Combat Training System (HACTS)</td>
<td>$10.0m</td>
</tr>
<tr>
<td>Price and Exchange Updates</td>
<td>$352.4m</td>
</tr>
<tr>
<td>Phase 2 current project approval (December 2003 prices)</td>
<td>$1,565.3m</td>
</tr>
<tr>
<td>Phase 2-expenditure to October 2003</td>
<td>$563.1m</td>
</tr>
</tbody>
</table>
(4) Refer to the table at part (2).

(5) Refer to the table at part (2). Completion of Phase 1 production was six months late, which in turn delayed the commencement of Phase 2. The delay was caused by the contractor underestimating the resources required for Phase 1 production. The contractor allocated additional resources to achieve the replanned schedule. The schedule for Phase 2.1 elements was originally planned to be completed with the rest of the Phase 2 upgrades in 2007. However, advanced Phase 2.1 activities enabled aircraft incorporation to be completed in August 2003.

(6) The Hornet system upgrades are intended to maintain the capability of the aircraft in the face of advances in technology. Substantial delays in the structural upgrades could lead to aircraft being taken out of service awaiting rework.

(7) Refer to tables at part (3).

(8) Refer to tables at part (3).

(9) Refer to tables at part (3).

Environment: Livestock Feed Grains

(Question No. 1748)

Senator O’Brien asked the Minister representing the Treasurer, upon notice, on 11 August 2003:

(1) With regard to the Government’s decision to provide domestic ethanol manufacturers with a production subsidy to offset the excise of 38.143 cents per litre applying to ethanol: (a) can the Minister advise: (i) what work was undertaken by Treasury, the Government’s Energy Task Force or any other Commonwealth agency to model the effects on livestock feed grains (in terms of price and availability) within Australia as a result of this decision prior to the introduction of this measure in September 2002; and (ii) what work was undertaken by Treasury, the Government’s Energy Task Force or any other Commonwealth agency to model the effects on livestock feed grains (in terms of price and availability) within Australia as a result of the decision to extend this measure to 2008; and (b) can a copy be provided of reports by Treasury, the Government’s Energy Task Force or any other Commonwealth agency on the effects of these measures on livestock feed grains within Australia; if not, why not.

(2) What work was or is currently being undertaken by Treasury, the Government’s Energy Task Force or any other Commonwealth agency to model the effects on livestock feed grains (in terms of price and availability) within Australia as a result of the following promises contained in the Coalition’s 2001 Election Statement entitled ‘Our Future Action Plan Growing Stronger’: (a) setting a target that biofuels contribute 350 million litres to the total annual transport fuel supply by 2010; and
(b) introducing a capital subsidy of $0.16 for each litre of new or expanded biofuel production capacity until the additional 310 million litres target is reached or by the end of 2006-07.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator’s question:

Refer to answer to QoN 1749 by the Minister for the Environment and Heritage.

Goods and Services Tax
(Question No. 1950)

Senator Brown asked the Minister representing the Treasurer, upon notice, on 11 September 2003:

(1) Did the Government receive a legal opinion from the Australian Government Solicitor about whether or not it was constitutionally possible for the Commonwealth to deliver a legally binding and enforceable right of veto to the States in relation to the rate of a goods and services tax (GST); if so; can a copy of that opinion be provided.

(2) Since the passage of the GST legislation, do the state and territory governments have a legally binding and enforceable right of veto over changes to the rate of the GST now and in the future.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator’s question:

(1) The Australian Government sought legal advice on numerous matters relating to the introduction of the GST at the time The New Tax System was being developed and has sought further legal advice on various matters related to tax reform since that time. Successive governments have adopted the practice of not disclosing the legal advice they receive. The Government does not intend to depart from that practice. However, I would note that under the A New Tax System (Commonwealth-State Financial Arrangements) Act 1999, the rate of the GST, and the GST base, are not to be changed unless each State agrees to the change. This reflects that all GST revenue collected is received by the States.

(2) Senate Standing Order 73 prohibits questions that ask for legal opinion (Order 73(1)(j)).

Telstra: Services
(Question No. 2187)

Senator Lundy asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 8 October 2003:

(1) Does Telstra make the telephone numbers of public pay phones available to the public; if not, why not.

(2) Does Telstra give its customers a choice of receiving their annual copies of the ‘White Pages’ and ‘Yellow Pages’ telephone directories on a ‘CD-ROM’, rather than in a hard-copy ‘phone book’ format; if not, why not.

Senator Kemp—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question:

(1) Telstra has advised that it only makes the number of a public payphone available to the public where the public payphone has inbound voice access. Telstra has further advised that inbound voice access is not available for the vast majority of its payphones; and that it provides payphones with inbound voice access in certain remote communities where there is no inbound calling access through residential or business fixed line phones. Where inbound voice access is provided, the number of the payphone is made available to the community.
(2) Telstra has advised that it does provide the White Pages on CD-ROM as an alternative to the printed directory. Telstra imposes a charge for the CD-ROM where the customer agrees to take the directory in this form. Telstra has advised that it makes the White Pages available free of charge in the form of the White Pages Online product. Telstra has advised that it does not produce the Yellow Pages on CD-ROM and has no plans to do so. Telstra advised that there is very little demand for the Yellow Pages on CD-ROM.

**Telstra: Email Services**

(Question No. 2310)

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 16 October 2003:

With reference to the additional answer to Senator Mackay’s question without notice on Tuesday, 14 October 2003 (Senate *Hansard*, 14 October 2003, p.16077), regarding Telstra e-mail services:

(1) (a) What are Telstra’s standard compensation claim procedures; and (b) are these procedures publicised by Telstra; if so, how.

(2) How are compensation claims determined.

(3) What payments, if any, are likely to be made to affected customers.

(4) How would a typical small business that has experienced internet and e-mail outages over the past few weeks and as a result, lost business or had customer contracts delayed, be compensated.

(5) Will all Telstra BigPond customers affected by the e-mail and internet outages over the past few weeks be advised of Telstra’s compensation claim procedures.

Senator Kemp—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question based on advice provided by Telstra:

(1) (a) Telstra has advised that any customer or member of the public is entitled to lodge a compensation claim with the company via its publicised contact numbers or, for larger companies via their account executive, where they believe loss or damage has been caused by acts or omissions in the supply by Telstra of telecommunication services and related goods and services. According to Telstra it has a documented compensation claims procedure which is used to manage all types of compensation claims and which includes detailed information to claimants about their rights and what information is required to be provided in order for Telstra to assess a claim.

(b) Telstra has advised that the information is publicly available on its website [http://www.telstra.com.au/contact/complaints.htm](http://www.telstra.com.au/contact/complaints.htm)

(2) Telstra has advised that customers who believe they have suffered financial loss should contact Telstra where their claims will be assessed on a case-by-case basis, having regard to the loss established and the degree, if any, to which Telstra may have failed to meet its obligations, and may have incurred a liability for the loss. The Telstra BigPond site includes this advice to its customers and provides a contact telephone number for customers seeking compensation.

(3) Telstra announced on 17 October that all BigPond customers would receive a credit of two weeks of the monthly BigPond subscription fee. Additionally, BigPond customers would have access to the BigPond virus and spam filters and the BigPond personal firewall software, free of charge for a three month period (up until 17 January 2004).

(4) See response to part (2).

(5) Telstra advised that its customers are advised by telephone support agents, and are informed on its BigPond website about how to make a claim to Telstra.
Australian Defence Force: Vacancies

(Question No. 2335)

Senator Bartlett asked the Minister for Defence, upon notice, on 29 October 2003:

(1) How many applications to join the Australian Defence Forces were received in the 2002-03 financial year; and of these, how many: (i) were withdrawn by the applicant, (ii) were rejected, (iii) were successful, and (iv) remained unresolved.

(2) For each arm of the Defence forces, can statistics be provided about the average time period between an application to join and an affirmative or negative decision

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

(1) The total number of applications received during financial year 2002/03 to join the Australian Defence Force (ADF) was 25,998.
(i) 4625.
(ii) 9339.
(iii) 4704.
(iv) 7330.

(2) Statistics can be provided for each arm of the ADF regarding the average time period between an application and a negative decision; however, as a negative decision can occur anywhere from the initial telephone enquiry to the end of a long recruiting process, there will be a very large range of delay times and an average may not necessarily reflect the most common delay period.

Family and Community Services: Alternative Dispute Resolution

(Question No. 2354)

Senator Ludwig asked the Minister for Family and Community 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 Patterson—The answer to the honourable senator’s question is as follows:

This response is on behalf on the Department of Family and Community Services, and service agencies within my portfolio (ie. Centrelink and the Child Support Agency). The term ‘alternate dispute resolution’ (‘ADR’) is taken to mean the processes by which matters are resolved outside of court-based litigation, and includes mediation, conciliation, arbitration and expert determination. In the context of my portfolio, it is taken to include the comprehensive system of internal and tribunal-based review of decisions affecting Centrelink and Child Support Agency customers.

(1) (2) and (3) In relation to all dispute resolution, the department and agencies are bound by the Legal Services Directions issued by the Attorney-General’s Department. In particular, Appendix B: Directions on the Commonwealth’s Obligation to act as a Model Litigant, imposes an obligation to avoid litigation wherever possible. Disputes that are resolved through ADR mechanisms must comply with legal and legislative requirements.
There is a comprehensive and effective system in place that enables Centrelink customers to seek review of decisions under the social security and family assistance law without recourse to litigation. The system of review comprises two tiers of internal review and two tiers of tribunal-based review. Under each step of the review process, customers have every opportunity to present their case and to provide further information if necessary. Each step is readily accessible and there are no fees for seeking review.

Under the first tier of internal review, a customer can discuss a decision with the original decision-maker. The second tier enables the customer to seek a review of the original decision by an authorised review officer (‘ARO’) who has not had previous involvement with the case. The two tiers of external review comprise the Social Security Appeals Tribunal the Administrative Appeals Tribunal (‘AAT’). In relation to the AAT, Centrelink officers are required to comply with Practice Directions issued by the AAT, which include ADR mechanisms. Centrelink has also developed internal practice guidelines that are designed to assist in resolving disputes.

A corresponding system of internal and external review is available to Child Support Agency customers. Again, the system is designed to avoid litigation wherever possible. If the customer seeks further court-based review (usually to a court exercising family law jurisdiction), the CSA engages in any ADR practices of the court.

Where the department or agencies are party to a contract of service or funding agreement, it is standard practice for an ADR clause to be included as a term of the contract or agreement, which may enable any dispute to be resolved without recourse to the courts.

In respect of common law claims against the department and its agencies, ADR is always considered as a possible means of resolution without the need for litigation. For example, Comcover Insurance, which manages public liability claims on behalf of Centrelink, adopts ADR practices such as written settlement negotiations, conciliation conferences and mediation. If a matter comes before a court, options will be explored to arrive at a negotiated settlement where appropriate, and any ADR mechanisms directed by the court will be pursued.

(4) In respect of legislation within my portfolio, the following provisions contain ADR procedures:

- Social Security (Administration) Act 1999, Part 4, Divisions 1-5 (sections 124 to 190);
- A New Tax System (Family Assistance)(Administration) Act 1999, Part 5, Divisions 1-4 (sections 104 to 152);
- Child Support (Assessment) Act 1989, Division 5, Part 6B, (sections 98W to 98ZJ);
- Child Support (Registration and Collection) Act 1988, Part VII, Division 2 (sections 95 to 103).


**Health and Ageing: Guidelines for Medication Management**

*(Question No. 2364)*

Senator Nettle asked the Minister representing the Minister for Health and Ageing, upon notice, on 6 November 2003:

With reference to the recently completed Guidelines for Medication Management in Residential Aged Care Facilities, which states on page 5, ‘[Consumer Medicine Information] should be provided to residents who are administering their own medications as an aid to counselling about their medicines. Where residents are not administering their own medications, CMI should be available to either residents or their carers’:
(1) Do residential aged care facilities have to comply with the guidelines in order to receive Commonwealth accreditation and/or funding; if so, how is compliance monitored; if not, why not.

(2) What role do these guidelines have in the accreditation and auditing process for residential aged care facilities.

(3) Are any other measures in place to ensure that all carers in residential aged care facilities have access to and knowledge of consumer medicine information sheets.

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

(1) The third edition of Guidelines for Medication Management in Residential Aged Care Facilities was developed by the Australian Pharmaceutical Advisory Council (APAC) and the Department of Health and Ageing to assist residential aged care facilities with medication management. The publication has been distributed to all Australian Government funded aged care homes. In 1997 the aged care reforms legislated by the Aged Care Act 1997 (the Act) established an accreditation-based quality assurance system for Australian Government funded residential aged care homes. In order to receive Australian Government funding all homes must be accredited. Approved Providers of aged care homes are required to meet their obligations under the Act and the Principles made under the Act. This includes meeting the requirements of the Accreditation Standards and Specified Care and Services.

Medication Management is one of the outcomes of the Standards (Outcome 2.14) and an approved provider must have policies and practices in place that demonstrate residents’ medication is managed safely and correctly. Specified Care and Services (Quality of Care Principles, Schedule 1) requires the approved provider to assess residents’ needs regarding medication and to order, reorder and administer medication, subject to the requirements of the State or Territory law.

(2) The role of the guidelines is to provide advice and information to guide homes in delivery of high quality care. They are not prescriptive. However, it is the responsibility of each home to decide what resources to use and how applicable they are in each circumstance to ensure quality use of medicines for all residents. The guidelines provide an up-to-date resource and take into account existing professional standards and relevant legislation.

(3) In order to comply with the Accreditation Standards aged care providers must ensure that appropriately qualified staff (under State or Territory legislation) are able to oversee, or provide actual physical help to residents so that the residents receive their medications, as prescribed. Whilst the pharmacist is responsible for the provision of Consumer Medication Information (CMI) to residents to assist them to make informed choices about their treatment with medicines, aged care providers are responsible for ensuring that staff have access to relevant education, training and ongoing development. It is the decision of each home to decide on appropriate education, training and resources to enable the formulation of policies and practices for medication management in order to support the quality use of medicines and to achieve the best outcomes for residents.

As a practical resource to those prescribing and administering medicines to older Australians, particularly those in residential aged care, the Department of Health and Ageing has recently completed work with Australian Medicines Handbook Pty Ltd (AMH) to develop a handbook, titled Australian Medicines Handbook Drug Choice Companion: Aged Care.

The handbook is particularly targeted at health care professionals who work with older people such as general practitioners, nurses, medical specialists, pharmacists and students of nursing, pharmacy and medicine, as well as educators. Each Commonwealth-funded residential aged care home has received a copy of the handbook.
The Australian Government’s Medicines Information to Consumers (MIC) Program, which has been established under the third Community Pharmacy Agreement between the Commonwealth and the Pharmacy Guild of Australia, recognises that pharmacists face additional costs in providing written CMI to consumers.

The MIC Program provides financial incentives to offset some of the costs associated with the provision of written CMI. These incentives have been designed to assist pharmacists to meet their professional obligation to advise and counsel consumers about the use of their medicines.

The MIC Participation Allowance, which provides ongoing financial assistance to help pharmacies to provide written CMI, was introduced on 1 January 2003. The allowance is payable every two months on submission of a written declaration that the pharmacy is providing written CMI to consumers purchasing prescription medicines.

The MIC Participation Allowance is an ongoing payment of 10c per Pharmaceutical Benefits Scheme (PBS) or Repatriation Pharmaceutical Benefits Scheme (RPBS) prescription dispensed by pharmacies participating in the MIC Program. The Allowance is payable every two months on submission of a written declaration from the pharmacy verifying that it is providing written CMI to consumers purchasing prescription medicines.

Medicare: Bulk-Billing
(Question No. 2371)

Senator Chris Evans asked the Minister representing the Minister for Health and Ageing, upon notice, on 10 November 2003:

With reference to unreferred general practitioner (GP) attendances, in relation to each electoral division, can the following information be provided for the twelve months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003:

(1) The percentage of attendances that were bulk billed.
(2) The total number of attendances that were bulk billed.
(3) The average patient contribution per service (patient billed services only).
(4) The total number of services.

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

(1) The percentage of non-referred general practitioner (GP) attendances that were bulk billed, for the twelve months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

<table>
<thead>
<tr>
<th>Electorate</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adelaide</td>
<td>82.6%</td>
<td>81.9%</td>
<td>74.6%</td>
<td>62.3%</td>
</tr>
<tr>
<td>Aston</td>
<td>85.8%</td>
<td>85.0%</td>
<td>81.5%</td>
<td>72.3%</td>
</tr>
<tr>
<td>Ballarat</td>
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### MEDICARE NON-REFERRED (GP) ATTENDANCES

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## QUESTIONS ON NOTICE

**MEDICARE NON-REFERRED (GP) ATTENDANCES**

**% BULK BILLED, BY FEDERAL ELECTORAL DIVISION**

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<th>Electorate</th>
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## Medicare Non-Referred (GP) Attendances

% Bulk Billed, by Federal Electorial Division

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<td>97.0%</td>
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<tr>
<td>Wentworth</td>
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The total number of non-referred general practitioner (GP) attendances that were bulk billed, for the twelve months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

### MEDICARE NON-REFERRED (GP) ATTENDANCES

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<th>Electorate</th>
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<tr>
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<tr>
<td>Wide Bay</td>
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<tr>
<td>Wills</td>
<td>90.5%</td>
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<tr>
<td>Australia</td>
<td>78.8%</td>
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### MEDICARE NON-REFERRED (GP) ATTENDANCES

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**QUESTIONS ON NOTICE**

**MEDICARE NON-REFERRED (GP) ATTENDANCES**

**NUMBER BULK BILLED, BY FEDERAL ELECTORAL DIVISION**

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### Medicare Non-Referred (GP) Attendances

**Number Bulk Billed, by Federal Electoral Division**

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(3) The average patient contribution per service (patient billed services only) for non-referred general practitioner (GP) attendances, for the twelve months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

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QUESTIONS ON NOTICE
### Medicare Non-Referral (GP) Attendances

#### Average Patient Contribution Per Service

**Non-Hospital Patient Billed Services**

**By Federal Electoral Division**

**Twelve months ending 30 September**

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### MEDICARE NON-REFERRED (GP) ATTENDANCES

**AVERAGE PATIENT CONTRIBUTION PER SERVICE**

**NON-HOSPITAL PATIENT BILLED SERVICES**

**BY FEDERAL ELECTORAL DIVISION**

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**QUESTIONS ON NOTICE**
The total number of non-referred general practitioner (GP) attendances for the twelve months ending:

(a) 30 September 2000;
(b) 30 September 2001;
(c) 30 September 2002; and
(d) 30 September 2003, in each federal electoral division, is as follows:

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(4) The total number of non-referred general practitioner (GP) attendances for the twelve months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

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<thead>
<tr>
<th>Ergotrate</th>
<th>Twelve months ending 30 September</th>
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## QUESTIONS ON NOTICE

### MEDICARE NON-REFERRED (GP) ATTENDANCES

#### TOTAL NO. OF SERVICES, BY FEDERAL ELECTORAL DIVISION

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<th>Electorate</th>
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## QUESTIONS ON NOTICE

**MEDICARE NON-REFERRED (GP) ATTENDANCES**

**TOTAL NO. OF SERVICES, BY FEDERAL ELECTORAL DIVISION**

<table>
<thead>
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<th>Electorate</th>
<th>Twelve months ending 30 September</th>
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### QUESTIONS ON NOTICE

**MEDICARE NON-REFERRED (GP) ATTENDANCES**

**TOTAL NO. OF SERVICES, BY FEDERAL ELECTORAL DIVISION**

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<th>2002</th>
<th>2003</th>
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<td>782,002</td>
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<tr>
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<td>1,067,139</td>
<td>1,044,409</td>
<td>1,049,219</td>
<td>1,010,386</td>
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<td>466,234</td>
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<td>Robertson</td>
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<td>671,700</td>
<td>649,508</td>
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<td>Ryan</td>
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<td>579,866</td>
<td>548,688</td>
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<td>Scullin</td>
<td></td>
<td>824,980</td>
<td>828,418</td>
<td>831,928</td>
<td>814,059</td>
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<td>Shortland</td>
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<td>650,897</td>
<td>622,409</td>
<td>612,736</td>
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<tr>
<td>Stirling</td>
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<td>759,018</td>
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<td>708,318</td>
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<tr>
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<td>663,841</td>
<td>653,797</td>
<td>622,159</td>
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<tr>
<td>Swan</td>
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<td>626,116</td>
<td>610,359</td>
<td>605,292</td>
<td>579,772</td>
</tr>
<tr>
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<td>797,705</td>
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<td>639,804</td>
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<td>620,276</td>
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<tr>
<td>Throsby</td>
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<td>780,543</td>
<td>790,680</td>
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<td>Wakefield</td>
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<td>573,056</td>
<td>582,449</td>
<td>573,173</td>
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<td>477,231</td>
<td>484,969</td>
<td>481,662</td>
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<td>691,412</td>
<td>680,023</td>
<td>653,254</td>
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<td>Watson</td>
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<td>921,560</td>
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<td>677,904</td>
<td>654,813</td>
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<td>857,360</td>
<td>846,473</td>
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<td></td>
<td>599,114</td>
<td>617,463</td>
<td>620,498</td>
<td>625,115</td>
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<tr>
<td>Wills</td>
<td></td>
<td>870,527</td>
<td>856,318</td>
<td>833,484</td>
<td>797,038</td>
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<tr>
<td>Australia</td>
<td></td>
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<td>100,229,267</td>
<td>99,350,189</td>
<td>96,098,572</td>
</tr>
</tbody>
</table>

#### Notes to the Tables

These statistics relate to non-referred (general practitioner) attendances that were rendered on a ‘fee-for-service’ basis and for which benefits were processed by the Health Insurance Commission in the respective years. Excluded are details of non-referred attendances to public patients in hospital, to Department of Veterans’ Affairs patients and some compensation cases.
These statistics were compiled from Medicare data by patient enrolment postcode. Where a postcode overlapped electoral boundaries, the statistics were allocated to electorate using statistics from the Census of Population and Housing, showing the proportion of the population of each postcode in the electorate in question.

Medicare statistics for some postcodes have not been allocated to electorates where the postcodes were not listed on the Census file. The national totals for the number of GP attendances bulk billed and number of GP services in (2) and (4) above will therefore be slightly lower than those recorded elsewhere. Furthermore, the percentage of services bulk billed for Australia (1) and the average patient contribution per service for Australia (3) may also differ slightly from those recorded elsewhere.

In (3), statistics are not available on the average patient contribution per service for patient billed services in hospital. The Medicare system does not record gap payments under private health insurance arrangements.

**Medicare: Bulk-Billing**

(Question No. 2372)

Senator Chris Evans asked the Minister representing the Minister for Health and Ageing, upon notice, on 10 November 2003:

With reference to unreferred general practitioner (GP) attendances, in relation to each electoral division, can the following information be provided for the quarter ending; (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003:

1. The percentage of attendances that were bulk billed.
2. The total number of attendances that were bulk billed.
3. The average patient contribution per service (patient billed services only).
4. The total number of services.

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

(1) The percentage of non-referred general practitioner (GP) attendances that were bulk billed, for the quarter ending; (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

<table>
<thead>
<tr>
<th>Electorate</th>
<th>September Quarter</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adelaide</td>
<td></td>
<td>81.7%</td>
<td>81.4%</td>
<td>69.7%</td>
<td>59.2%</td>
</tr>
<tr>
<td>Aston</td>
<td></td>
<td>85.8%</td>
<td>84.6%</td>
<td>77.3%</td>
<td>70.3%</td>
</tr>
<tr>
<td>Ballarat</td>
<td></td>
<td>64.6%</td>
<td>62.2%</td>
<td>57.1%</td>
<td>42.6%</td>
</tr>
<tr>
<td>Banks</td>
<td></td>
<td>87.6%</td>
<td>87.0%</td>
<td>86.1%</td>
<td>84.9%</td>
</tr>
<tr>
<td>Barker</td>
<td></td>
<td>43.1%</td>
<td>42.9%</td>
<td>38.5%</td>
<td>39.9%</td>
</tr>
<tr>
<td>Barton</td>
<td></td>
<td>92.7%</td>
<td>92.8%</td>
<td>91.8%</td>
<td>91.3%</td>
</tr>
<tr>
<td>Bass</td>
<td></td>
<td>50.9%</td>
<td>49.4%</td>
<td>49.8%</td>
<td>41.5%</td>
</tr>
<tr>
<td>Batman</td>
<td></td>
<td>92.1%</td>
<td>90.5%</td>
<td>86.2%</td>
<td>81.8%</td>
</tr>
<tr>
<td>Bendigo</td>
<td></td>
<td>49.3%</td>
<td>48.3%</td>
<td>48.0%</td>
<td>46.8%</td>
</tr>
<tr>
<td>Bennelong</td>
<td></td>
<td>82.8%</td>
<td>83.2%</td>
<td>81.7%</td>
<td>80.4%</td>
</tr>
<tr>
<td>Berowra</td>
<td></td>
<td>77.7%</td>
<td>77.1%</td>
<td>72.6%</td>
<td>69.6%</td>
</tr>
<tr>
<td>Blair</td>
<td></td>
<td>82.8%</td>
<td>80.6%</td>
<td>75.6%</td>
<td>71.2%</td>
</tr>
<tr>
<td>Blaxland</td>
<td></td>
<td>96.2%</td>
<td>96.6%</td>
<td>95.8%</td>
<td>95.7%</td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
### MEDICARE - NON-REFERRED (GP) ATTENDANCES

**% BULK BILLED, BY FEDERAL ELECTORAL DIVISION**

<table>
<thead>
<tr>
<th>Electorate</th>
<th>September Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>Bonython</td>
<td>93.5%</td>
</tr>
<tr>
<td>Boothby</td>
<td>64.8%</td>
</tr>
<tr>
<td>Bowman</td>
<td>86.0%</td>
</tr>
<tr>
<td>Braddon</td>
<td>65.5%</td>
</tr>
<tr>
<td>Bradfield</td>
<td>68.9%</td>
</tr>
<tr>
<td>Brand</td>
<td>79.5%</td>
</tr>
<tr>
<td>Brisbane</td>
<td>85.7%</td>
</tr>
<tr>
<td>Bruce</td>
<td>85.8%</td>
</tr>
<tr>
<td>Burke</td>
<td>71.0%</td>
</tr>
<tr>
<td>Calare</td>
<td>62.0%</td>
</tr>
<tr>
<td>Calwell</td>
<td>93.8%</td>
</tr>
<tr>
<td>Canberra</td>
<td>58.3%</td>
</tr>
<tr>
<td>Canning</td>
<td>69.7%</td>
</tr>
<tr>
<td>Capricornia</td>
<td>45.5%</td>
</tr>
<tr>
<td>Casey</td>
<td>75.5%</td>
</tr>
<tr>
<td>Charlton</td>
<td>77.9%</td>
</tr>
<tr>
<td>Chifley</td>
<td>98.6%</td>
</tr>
<tr>
<td>Chisholm</td>
<td>82.9%</td>
</tr>
<tr>
<td>Cook</td>
<td>80.5%</td>
</tr>
<tr>
<td>Corangamite</td>
<td>52.8%</td>
</tr>
<tr>
<td>Corio</td>
<td>66.6%</td>
</tr>
<tr>
<td>Cowan</td>
<td>87.9%</td>
</tr>
<tr>
<td>Cowper</td>
<td>54.3%</td>
</tr>
<tr>
<td>Cunningham</td>
<td>84.7%</td>
</tr>
<tr>
<td>Curtin</td>
<td>64.3%</td>
</tr>
<tr>
<td>Dawson</td>
<td>58.4%</td>
</tr>
<tr>
<td>Deakin</td>
<td>79.2%</td>
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<tr>
<td>Denison</td>
<td>59.1%</td>
</tr>
<tr>
<td>Dickson</td>
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</tr>
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<td>Dobell</td>
<td>81.8%</td>
</tr>
<tr>
<td>Dunkley</td>
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</tr>
<tr>
<td>Eden-Monaro</td>
<td>42.2%</td>
</tr>
<tr>
<td>Fadden</td>
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</tr>
<tr>
<td>Fairfax</td>
<td>77.2%</td>
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<tr>
<td>Farrer</td>
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</tr>
<tr>
<td>Fisher</td>
<td>89.0%</td>
</tr>
<tr>
<td>Flinders</td>
<td>69.7%</td>
</tr>
<tr>
<td>Forde</td>
<td>90.8%</td>
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<tr>
<td>Forrest</td>
<td>52.2%</td>
</tr>
<tr>
<td>Fowler</td>
<td>98.3%</td>
</tr>
<tr>
<td>Franklin</td>
<td>58.9%</td>
</tr>
<tr>
<td>Fraser</td>
<td>64.7%</td>
</tr>
<tr>
<td>Fremantle</td>
<td>81.7%</td>
</tr>
<tr>
<td>Gellibrand</td>
<td>93.5%</td>
</tr>
<tr>
<td>Gilmore</td>
<td>65.0%</td>
</tr>
<tr>
<td>Gippsland</td>
<td>53.5%</td>
</tr>
</tbody>
</table>
## MEDICARE - NON-REFERRED (GP) ATTENDANCES

### % BULK BILLED, BY FEDERAL ELECTORAL DIVISION

<table>
<thead>
<tr>
<th>Electorate</th>
<th>September Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>Goldstein</td>
<td>71.5%</td>
</tr>
<tr>
<td>Grayndler</td>
<td>94.9%</td>
</tr>
<tr>
<td>Greenway</td>
<td>95.6%</td>
</tr>
<tr>
<td>Grey</td>
<td>66.8%</td>
</tr>
<tr>
<td>Griffith</td>
<td>87.8%</td>
</tr>
<tr>
<td>Groom</td>
<td>71.7%</td>
</tr>
<tr>
<td>Gwydir</td>
<td>60.8%</td>
</tr>
<tr>
<td>Hasluck</td>
<td>81.4%</td>
</tr>
<tr>
<td>Herbert</td>
<td>65.7%</td>
</tr>
<tr>
<td>Higgins</td>
<td>72.9%</td>
</tr>
<tr>
<td>Hindmarsh</td>
<td>75.4%</td>
</tr>
<tr>
<td>Hinkler</td>
<td>37.8%</td>
</tr>
<tr>
<td>Holt</td>
<td>90.5%</td>
</tr>
<tr>
<td>Hotham</td>
<td>86.5%</td>
</tr>
<tr>
<td>Hughes</td>
<td>79.8%</td>
</tr>
<tr>
<td>Hume</td>
<td>61.6%</td>
</tr>
<tr>
<td>Hunter</td>
<td>58.8%</td>
</tr>
<tr>
<td>Indi</td>
<td>40.9%</td>
</tr>
<tr>
<td>Isaacs</td>
<td>84.4%</td>
</tr>
<tr>
<td>Jagajaga</td>
<td>76.1%</td>
</tr>
<tr>
<td>Kalgoorlie</td>
<td>63.9%</td>
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<tr>
<td>Kennedy</td>
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<tr>
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<td>La Trobe</td>
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<tr>
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<td>71.2%</td>
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<tr>
<td>Longman</td>
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<tr>
<td>Lowe</td>
<td>93.9%</td>
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<tr>
<td>Lyne</td>
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<td>Lyons</td>
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<tr>
<td>Makin</td>
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<td>Mallee</td>
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<td>Maranoa</td>
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<tr>
<td>Maribyrnong</td>
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</tr>
<tr>
<td>Mayo</td>
<td>67.2%</td>
</tr>
<tr>
<td>McEwen</td>
<td>71.5%</td>
</tr>
<tr>
<td>McMillan</td>
<td>67.4%</td>
</tr>
<tr>
<td>McPherson</td>
<td>83.8%</td>
</tr>
<tr>
<td>Electorate</td>
<td>September Quarter</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Melbourne</td>
<td>89.1%  87.1%  83.4%  79.6%</td>
</tr>
<tr>
<td>Melbourne Ports</td>
<td>82.8%  77.1%  72.6%  70.5%</td>
</tr>
<tr>
<td>Menzies</td>
<td>80.0%  77.8%  73.9%  69.8%</td>
</tr>
<tr>
<td>Mitchell</td>
<td>83.5%  83.2%  81.5%  80.5%</td>
</tr>
<tr>
<td>Moncrieff</td>
<td>83.3%  78.9%  71.3%  66.5%</td>
</tr>
<tr>
<td>Moore</td>
<td>78.1%  74.4%  70.8%  63.6%</td>
</tr>
<tr>
<td>Moreton</td>
<td>89.0%  85.1%  77.1%  66.2%</td>
</tr>
<tr>
<td>Murray</td>
<td>40.5%  37.1%  32.4%  31.1%</td>
</tr>
<tr>
<td>New England</td>
<td>56.3%  54.8%  47.6%  47.2%</td>
</tr>
<tr>
<td>Newcastle</td>
<td>79.1%  76.7%  69.0%  61.1%</td>
</tr>
<tr>
<td>North Sydney</td>
<td>72.3%  70.4%  65.3%  59.5%</td>
</tr>
<tr>
<td>O’Connor</td>
<td>48.2%  49.7%  49.9%  49.5%</td>
</tr>
<tr>
<td>Oxley</td>
<td>92.2%  90.6%  79.8%  72.5%</td>
</tr>
<tr>
<td>Page</td>
<td>52.1%  49.5%  46.7%  47.1%</td>
</tr>
<tr>
<td>Parkes</td>
<td>62.5%  62.9%  69.9%  67.1%</td>
</tr>
<tr>
<td>Parramatta</td>
<td>92.9%  92.7%  92.6%  90.8%</td>
</tr>
<tr>
<td>Paterson</td>
<td>67.2%  64.4%  55.9%  53.1%</td>
</tr>
<tr>
<td>Pearce</td>
<td>78.9%  74.7%  72.1%  69.8%</td>
</tr>
<tr>
<td>Perth</td>
<td>87.6%  85.0%  78.4%  70.7%</td>
</tr>
<tr>
<td>Petrie</td>
<td>87.3%  84.2%  65.4%  57.2%</td>
</tr>
<tr>
<td>Port Adelaide</td>
<td>90.7%  90.4%  87.3%  78.5%</td>
</tr>
<tr>
<td>Prospect</td>
<td>97.9%  97.9%  97.6%  96.8%</td>
</tr>
<tr>
<td>Rankin</td>
<td>94.4%  92.7%  88.6%  81.3%</td>
</tr>
<tr>
<td>Reid</td>
<td>98.4%  98.3%  98.1%  97.1%</td>
</tr>
<tr>
<td>Richmond</td>
<td>76.3%  70.6%  69.0%  61.4%</td>
</tr>
<tr>
<td>Riverina</td>
<td>43.6%  43.6%  45.4%  44.9%</td>
</tr>
<tr>
<td>Robertson</td>
<td>79.3%  71.8%  63.7%  62.5%</td>
</tr>
<tr>
<td>Ryan</td>
<td>73.2%  68.9%  54.4%  47.4%</td>
</tr>
<tr>
<td>Scullin</td>
<td>90.2%  88.2%  86.9%  83.8%</td>
</tr>
<tr>
<td>Shortland</td>
<td>75.2%  63.8%  57.0%  51.3%</td>
</tr>
<tr>
<td>Solomon</td>
<td>62.5%  61.7%  57.6%  55.2%</td>
</tr>
<tr>
<td>Stirling</td>
<td>85.5%  83.8%  78.3%  72.6%</td>
</tr>
<tr>
<td>Sturt</td>
<td>70.3%  66.0%  58.9%  51.0%</td>
</tr>
<tr>
<td>Swan</td>
<td>84.7%  81.8%  77.1%  72.1%</td>
</tr>
<tr>
<td>Sydney</td>
<td>90.4%  88.0%  85.0%  83.1%</td>
</tr>
<tr>
<td>Tangney</td>
<td>74.5%  72.7%  66.3%  61.0%</td>
</tr>
<tr>
<td>Throsby</td>
<td>92.5%  92.7%  92.1%  94.2%</td>
</tr>
<tr>
<td>Wakefield</td>
<td>52.5%  47.6%  42.5%  43.2%</td>
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<tr>
<td>Wannon</td>
<td>54.9%  54.8%  50.6%  40.1%</td>
</tr>
<tr>
<td>Warringah</td>
<td>77.4%  75.1%  72.5%  68.7%</td>
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<tr>
<td>Watson</td>
<td>97.0%  96.9%  96.2%  95.5%</td>
</tr>
<tr>
<td>Wentworth</td>
<td>82.2%  77.8%  74.9%  71.4%</td>
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<tr>
<td>Werriwa</td>
<td>95.9%  95.9%  95.6%  95.2%</td>
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<tr>
<td>Wide Bay</td>
<td>69.7%  67.4%  59.9%  60.3%</td>
</tr>
<tr>
<td>Wills</td>
<td>89.9%  88.3%  83.5%  78.2%</td>
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<tr>
<td>Australia</td>
<td>78.4%  76.1%  71.2%  67.4%</td>
</tr>
</tbody>
</table>

**QUESTIONS ON NOTICE**

**MEDICARE - NON-REFERRED (GP) ATTENDANCES**

**% BULK BILLED, BY FEDERAL ELECTORAL DIVISION**

- Melbourne
- Melbourne Ports
- Menzies
- Mitchell
- Moncrieff
- Moore
- Moreton
- Murray
- New England
- Newcastle
- North Sydney
- O’Connor
- Oxley
- Page
- Parkes
- Parramatta
- Paterson
- Pearce
- Perth
- Petrie
- Port Adelaide
- Prospect
- Rankin
- Reid
- Richmond
- Riverina
- Robertson
- Ryan
- Scullin
- Shortland
- Solomon
- Stirling
- Sturt
- Swan
- Sydney
- Tangney
- Throsby
- Wakefield
- Wannon
- Warringah
- Watson
- Wentworth
- Werriwa
- Wide Bay
- Wills
- Australia
(2) The total number of non-referred general practitioner (GP) attendances that were bulk billed, for the quarter ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

<table>
<thead>
<tr>
<th>Medicare - Non-Referrer (GP) Attendances</th>
<th>Number Bulk Billed, by Federal Electoral Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electorate</td>
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<tr>
<td></td>
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<tr>
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<td>146,287</td>
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<td>168,818</td>
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<td>Ballarat</td>
<td>93,592</td>
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<tr>
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<td>192,004</td>
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<td>65,421</td>
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<tr>
<td>Bass</td>
<td>57,503</td>
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<tr>
<td>Batman</td>
<td>210,420</td>
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<tr>
<td>Bendigo</td>
<td>65,696</td>
</tr>
<tr>
<td>Bennelong</td>
<td>159,056</td>
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<tr>
<td>Berowra</td>
<td>140,151</td>
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<td>Blair</td>
<td>129,367</td>
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<td>286,273</td>
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<td>Bonython</td>
<td>232,576</td>
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<td>Boothby</td>
<td>113,785</td>
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<tr>
<td>Bowman</td>
<td>169,352</td>
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<tr>
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<td>115,416</td>
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<td>Dickson</td>
<td>134,887</td>
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### Medicare - Non-Referred (GP) Attendances

**Number Bulk Billed, By Federal Electoral Division**

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<th>September Quarter</th>
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<td>Dobell</td>
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<td>Griffith</td>
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<td>Gwydir</td>
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<td>Lilley</td>
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### MEDICARE - NON-REFERRED (GP) ATTENDANCES

**NUMBER BULK BILLED, BY FEDERAL ELECTORAL DIVISION**

<table>
<thead>
<tr>
<th>Electorate</th>
<th>September Quarter</th>
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<td>Lowe</td>
<td>199,138</td>
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<td>Lyne</td>
<td>109,842</td>
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<td>Lyons</td>
<td>75,499</td>
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<td>Macarthur</td>
<td>216,900</td>
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<td>Mackellar</td>
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<td>Macquarie</td>
<td>140,412</td>
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<td>Makin</td>
<td>145,776</td>
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<tr>
<td>Mallee</td>
<td>78,120</td>
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<td>Maranoa</td>
<td>78,029</td>
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<td>115,254</td>
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<td>McPherson</td>
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<td>Melbourne</td>
<td>188,419</td>
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<td>Melbourne Ports</td>
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<tr>
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<td>Moncrieff</td>
<td>180,145</td>
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<td>Moore</td>
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<td>72,747</td>
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<td>140,814</td>
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<td>119,274</td>
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<td>O'Connor</td>
<td>58,072</td>
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<td>Oxley</td>
<td>205,464</td>
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<tr>
<td>Page</td>
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<td>Parramatta</td>
<td>226,509</td>
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<td>Paterson</td>
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<td>Pearce</td>
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<td>161,471</td>
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<td>Riverina</td>
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<td>Ryan</td>
<td>113,823</td>
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<tr>
<td>Scullin</td>
<td>196,542</td>
</tr>
</tbody>
</table>
MEDICARE - NON-REFERRED (GP) ATTENDANCES

NUMBER BULK BILLED, BY FEDERAL ELECTORAL DIVISION

<table>
<thead>
<tr>
<th>Electorate</th>
<th>September Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>Shortland</td>
<td>131,649</td>
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<tr>
<td>Solomon</td>
<td>48,750</td>
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<tr>
<td>Stirling</td>
<td>174,913</td>
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<td>Sturt</td>
<td>129,172</td>
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<tr>
<td>Swan</td>
<td>142,757</td>
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<tr>
<td>Sydney</td>
<td>190,040</td>
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<tr>
<td>Tangney</td>
<td>125,424</td>
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<td>Throsby</td>
<td>183,735</td>
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<td>Wakefield</td>
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<td>Wannon</td>
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<td>Warringah</td>
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<tr>
<td>Australia</td>
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</table>

(3) The average patient contribution per service (patient billed services only) for non-referred general practitioner (GP) attendances, for the quarter ending; (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

MEDICARE - NON-REFERRED (GP) ATTENDANCES

AVERAGE PATIENT CONTRIBUTION PER SERVICE

NON-HOSPITAL PATIENT BILLED SERVICES

BY FEDERAL ELECTORAL DIVISION

<table>
<thead>
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<th>Electorate</th>
<th>September Quarter</th>
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<td>2000</td>
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<td>Adelaide</td>
<td>$9.96</td>
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QUESTIONS ON NOTICE
### Medicare - Non-referred (GP) Attendances

**Average Patient Contribution per Service**

**Non-hospital Patient Billed Services**

**By Federal Electoral Division**

<table>
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<tr>
<th>Electorate</th>
<th>September Quarter</th>
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<td>Capricornia</td>
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QUESTIONS ON NOTICE
### MEDICARE - NON-REFERRED (GP) ATTENDANCES

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**NON-HOSPITAL PATIENT BILLED SERVICES**

**BY FEDERAL ELECTORAL DIVISION**

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### MEDICARE - NON-REFERRED (GP) ATTENDANCES
### AVERAGE PATIENT CONTRIBUTION PER SERVICE
### NON-HOSPITAL PATIENT BILLED SERVICES
### BY FEDERAL ELECTORAL DIVISION

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(4) The total number of non-referred general practitioner (GP) attendances, for the quarter ending:
(a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, in each federal electoral division, is as follows:

### MEDICARE - NON-REFERRED (GP) ATTENDANCES
### TOTAL NO. OF SERVICES, BY FEDERAL ELECTORAL DIVISION

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QUESTIONS ON NOTICE
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### Medicare - Non-Referred (GP) Attendances

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</tr>
<tr>
<td>Kalgoorlie</td>
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</tr>
<tr>
<td>Kennedy</td>
<td>135,166</td>
</tr>
<tr>
<td>Kingsford-Smith</td>
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</tr>
<tr>
<td>Kingston</td>
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</tr>
<tr>
<td>Kooyong</td>
<td>152,613</td>
</tr>
<tr>
<td>La Trobe</td>
<td>184,880</td>
</tr>
<tr>
<td>Lalor</td>
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</tr>
<tr>
<td>Leichhardt</td>
<td>162,870</td>
</tr>
<tr>
<td>Lilley</td>
<td>189,856</td>
</tr>
<tr>
<td>Lindsay</td>
<td>213,724</td>
</tr>
<tr>
<td>Lingiari</td>
<td>50,935</td>
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<tr>
<td>Longman</td>
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<tr>
<td>Lowe</td>
<td>212,016</td>
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<tr>
<td>Lyne</td>
<td>161,317</td>
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<tr>
<td>Lyons</td>
<td>109,456</td>
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<tr>
<td>Macarthur</td>
<td>238,524</td>
</tr>
<tr>
<td>Mackellar</td>
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<tr>
<td>Macquarie</td>
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<tr>
<td>Makin</td>
<td>187,244</td>
</tr>
<tr>
<td>Mallee</td>
<td>138,968</td>
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<tr>
<td>Maranoa</td>
<td>145,413</td>
</tr>
<tr>
<td>Maribyrnong</td>
<td>213,718</td>
</tr>
<tr>
<td>Mayo</td>
<td>171,468</td>
</tr>
<tr>
<td>McEwen</td>
<td>170,226</td>
</tr>
<tr>
<td>McMillan</td>
<td>154,170</td>
</tr>
<tr>
<td>McPherson</td>
<td>218,080</td>
</tr>
<tr>
<td>Melbourne</td>
<td>211,467</td>
</tr>
<tr>
<td>Melbourne Ports</td>
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<tr>
<td>Menzies</td>
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</tr>
<tr>
<td>Mitchell</td>
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</tr>
<tr>
<td>Moncrieff</td>
<td>216,158</td>
</tr>
<tr>
<td>Moore</td>
<td>157,332</td>
</tr>
<tr>
<td>Moreton</td>
<td>186,231</td>
</tr>
<tr>
<td>Murray</td>
<td>133,403</td>
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<tr>
<td>New England</td>
<td>129,162</td>
</tr>
<tr>
<td>Newcastle</td>
<td>177,966</td>
</tr>
<tr>
<td>North Sydney</td>
<td>165,058</td>
</tr>
<tr>
<td>O'Connor</td>
<td>120,457</td>
</tr>
<tr>
<td>Oxley</td>
<td>222,803</td>
</tr>
<tr>
<td>Page</td>
<td>136,031</td>
</tr>
<tr>
<td>Parkes</td>
<td>128,091</td>
</tr>
<tr>
<td>Parramatta</td>
<td>243,856</td>
</tr>
<tr>
<td>Paterson</td>
<td>154,066</td>
</tr>
</tbody>
</table>

---

**QUESTIONS ON NOTICE**
Total No. of Services, by Federal Electoral Division

<table>
<thead>
<tr>
<th>Electorate</th>
<th>September Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>Pearce</td>
<td>147,819</td>
</tr>
<tr>
<td>Perth</td>
<td>184,251</td>
</tr>
<tr>
<td>Petrie</td>
<td>197,252</td>
</tr>
<tr>
<td>Port Adelaide</td>
<td>231,111</td>
</tr>
<tr>
<td>Prospect</td>
<td>289,557</td>
</tr>
<tr>
<td>Rankin</td>
<td>224,501</td>
</tr>
<tr>
<td>Reid</td>
<td>281,517</td>
</tr>
<tr>
<td>Richmond</td>
<td>160,900</td>
</tr>
<tr>
<td>Riverina</td>
<td>123,346</td>
</tr>
<tr>
<td>Robertson</td>
<td>190,637</td>
</tr>
<tr>
<td>Ryan</td>
<td>155,440</td>
</tr>
<tr>
<td>Scullin</td>
<td>217,841</td>
</tr>
<tr>
<td>Shortland</td>
<td>174,962</td>
</tr>
<tr>
<td>Solomon</td>
<td>77,999</td>
</tr>
<tr>
<td>Stirling</td>
<td>204,637</td>
</tr>
<tr>
<td>Sturt</td>
<td>183,726</td>
</tr>
<tr>
<td>Swan</td>
<td>168,562</td>
</tr>
<tr>
<td>Sydney</td>
<td>210,268</td>
</tr>
<tr>
<td>Tangney</td>
<td>168,426</td>
</tr>
<tr>
<td>Throsby</td>
<td>198,720</td>
</tr>
<tr>
<td>Wakefield</td>
<td>153,319</td>
</tr>
<tr>
<td>Wannon</td>
<td>127,487</td>
</tr>
<tr>
<td>Warringah</td>
<td>182,865</td>
</tr>
<tr>
<td>Watson</td>
<td>265,869</td>
</tr>
<tr>
<td>Wentworth</td>
<td>187,257</td>
</tr>
<tr>
<td>Werriwa</td>
<td>236,524</td>
</tr>
<tr>
<td>Wide Bay</td>
<td>157,018</td>
</tr>
<tr>
<td>Wills</td>
<td>225,909</td>
</tr>
<tr>
<td>Total</td>
<td>26,643,448</td>
</tr>
</tbody>
</table>

Notes to the Tables

These statistics relate to non-referred (general practitioner) attendances that were rendered on a ‘fee-for-service’ basis and for which benefits were processed by the Health Insurance Commission in the respective quarters. Excluded are details of non-referred attendances to public patients in hospital, to Department of Veterans’ Affairs patients and some compensation cases.

These statistics were compiled from Medicare data by patient enrolment postcode. Where a postcode overlapped electoral boundaries, the statistics were allocated to electorate using statistics from the Census of Population and Housing, showing the proportion of the population of each postcode in the electorate in question.

Medicare statistics for some postcodes have not been allocated to electorates where the postcodes were not listed on the Census file. The national totals for the number of GP attendances bulk billed and number of GP services in (2) and (4) above will therefore be slightly lower than those recorded elsewhere. Furthermore, the percentage of services bulk billed for Australia (1) and the average patient contribution per service for Australia (3) may also differ slightly from those recorded elsewhere.
In (3), statistics are not available on the average patient contribution per service for patient billed services in hospital. The Medicare system does not record gap payments under private health insurance arrangements.

**Medicare: Bulk-Billing**

*(Question No. 2373)*

**Senator Chris Evans** asked the Minister representing the Minister for Health and Ageing, upon notice, on 10 November 2003:

With reference to unreferred general practitioner (GP) attendances, in relation to each state and territory, can the following information be provided for the quarter ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003:

1. The percentage of attendances that were bulk billed.
2. The total number of attendances that were bulk billed.
3. The average patient contribution per service (patient billed services only).
4. The total number of services.

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

1. The percentage of non-referred (general practitioner) attendances that were bulk billed under Medicare, by State/Territory (based on patient enrolment postcode), for the quarters ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:

   **MEDICARE - NON-REFERRED (GP) ATTENDANCES**
   % BULK BILLED, BY STATE/TERRITORY (ENROLMENT)

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>September Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>NSW</td>
<td>82.0%</td>
</tr>
<tr>
<td>VIC</td>
<td>77.3%</td>
</tr>
<tr>
<td>QLD</td>
<td>79.4%</td>
</tr>
<tr>
<td>SA</td>
<td>73.7%</td>
</tr>
<tr>
<td>WA</td>
<td>76.2%</td>
</tr>
<tr>
<td>TAS</td>
<td>60.5%</td>
</tr>
<tr>
<td>NT</td>
<td>65.9%</td>
</tr>
<tr>
<td>ACT</td>
<td>61.4%</td>
</tr>
<tr>
<td>AUSTRALIA</td>
<td>78.3%</td>
</tr>
</tbody>
</table>

2. The total number of non-referred (general practitioner) attendances that were bulk billed under Medicare, by State/Territory (based on patient enrolment postcode), for the quarters ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:

   **MEDICARE NON-REFERRED (GP) ATTENDANCES**
   NUMBER BULK BILLED, BY STATE/TERRITORY (ENROLMENT)

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>September Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>NSW</td>
<td>7,905,750</td>
</tr>
<tr>
<td>VIC</td>
<td>5,143,443</td>
</tr>
<tr>
<td>QLD</td>
<td>3,807,526</td>
</tr>
</tbody>
</table>
(3) The average patient contribution per service (non-hospital, patient billed services only), for non-referred (general practitioner) attendances under Medicare, by State/Territory (based on patient enrolment postcode), for the quarters ending; (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:

**MEDICARE NON-REFERRED (GP) ATTENDANCES**

**AVERAGE PATIENT CONTRIBUTION PER SERVICE BY STATE/TERRITORY (ENROLMENT)**

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>September Quarter</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td></td>
<td>$10.77</td>
<td>$11.57</td>
<td>$12.91</td>
<td>$14.37</td>
</tr>
<tr>
<td>VIC</td>
<td></td>
<td>$10.87</td>
<td>$11.54</td>
<td>$12.81</td>
<td>$13.70</td>
</tr>
<tr>
<td>QLD</td>
<td></td>
<td>$10.84</td>
<td>$11.52</td>
<td>$12.56</td>
<td>$13.43</td>
</tr>
<tr>
<td>SA</td>
<td></td>
<td>$9.06</td>
<td>$9.63</td>
<td>$10.46</td>
<td>$10.98</td>
</tr>
<tr>
<td>WA</td>
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<td>$11.80</td>
<td>$11.67</td>
<td>$12.84</td>
<td>$13.79</td>
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<tr>
<td>TAS</td>
<td></td>
<td>$8.56</td>
<td>$8.90</td>
<td>$9.45</td>
<td>$10.77</td>
</tr>
<tr>
<td>NT</td>
<td></td>
<td>$16.39</td>
<td>$17.08</td>
<td>$18.51</td>
<td>$20.03</td>
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<tr>
<td>ACT</td>
<td></td>
<td>$13.85</td>
<td>$14.75</td>
<td>$16.06</td>
<td>$18.09</td>
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<tr>
<td>AUSTRALIA</td>
<td></td>
<td>$10.77</td>
<td>$11.40</td>
<td>$12.57</td>
<td>$13.61</td>
</tr>
</tbody>
</table>

(4) The total number of non-referred (general practitioner) attendances under Medicare, by State/Territory (based on patient enrolment postcode), for the quarters ending; (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:

**MEDICARE NON-REFERRED (GP) ATTENDANCES**

**TOTAL NO. OF SERVICES, BY STATE/TERRITORY (ENROLMENT)**

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>September Quarter</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td></td>
<td>9,640,379</td>
<td>9,578,804</td>
<td>9,490,238</td>
<td>9,429,483</td>
</tr>
<tr>
<td>VIC</td>
<td></td>
<td>6,651,816</td>
<td>6,600,874</td>
<td>6,639,473</td>
<td>6,404,769</td>
</tr>
<tr>
<td>QLD</td>
<td></td>
<td>4,792,988</td>
<td>4,906,019</td>
<td>4,808,225</td>
<td>4,763,353</td>
</tr>
<tr>
<td>SA</td>
<td></td>
<td>2,228,901</td>
<td>2,099,244</td>
<td>2,108,431</td>
<td>2,105,617</td>
</tr>
<tr>
<td>WA</td>
<td></td>
<td>2,313,707</td>
<td>2,321,638</td>
<td>2,260,382</td>
<td>2,204,047</td>
</tr>
<tr>
<td>TAS</td>
<td></td>
<td>593,884</td>
<td>611,717</td>
<td>603,126</td>
<td>578,647</td>
</tr>
<tr>
<td>NT</td>
<td></td>
<td>133,032</td>
<td>130,683</td>
<td>129,659</td>
<td>125,153</td>
</tr>
<tr>
<td>ACT</td>
<td></td>
<td>362,379</td>
<td>355,944</td>
<td>333,290</td>
<td>324,400</td>
</tr>
<tr>
<td>AUSTRALIA</td>
<td></td>
<td>26,717,086</td>
<td>26,604,923</td>
<td>26,372,824</td>
<td>25,905,469</td>
</tr>
</tbody>
</table>

Notes to the Tables

These statistics relate to non-referred (general practitioner) attendances that were rendered on a ‘fee-for-service’ basis and for which benefits were processed by the Health Insurance Commission.
Medicare: Bulk-Billing
(Question No. 2374)

Senator Chris Evans asked the Minister representing the Minister for Health and Ageing, upon notice, on 10 November 2003:

(1) With reference to unreferred general practitioner (GP) attendances, in relation to each Rural and Remote Area (RRMA), can the following information be provided for the 12 months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003:

(i) the percentage of attendances that were bulk billed;
(ii) the total number of attendances that were bulk billed;
(iii) the average patient contribution per service (patient billed services only); and
(iv) the total number of services.

(2) With reference to only those GPs who provided 1000 or more services in the 12 months ending 30 September 2003, can a breakdown by RRMA be provided, in the following bands, of the percentage that bulk billed for unreferred services: (a) less than 5 per cent; (b) 5 percent to 25 percent; (c) 25 percent to 50 percent; (d) 50 percent to 70 percent; (e) 70 percent to 75 percent; (f) 75 percent to 80 Percent; (g) 80 percent to 95 percent; and (h) greater than 95 per cent.

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

(1) (i) The percentage of total non-referred general practitioner (GP) attendances bulk billed under Medicare, by Rural, Remote and Metropolitan Area (RRMA) classification, for the twelve months ending; (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:

<table>
<thead>
<tr>
<th>Rural, Remote and Metropolitan Area</th>
<th>12 months ending 30 September</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>A: CAPITAL CITY</td>
<td>84.9%</td>
</tr>
<tr>
<td>B: OTHER METRO CENTRE</td>
<td>78.2%</td>
</tr>
<tr>
<td>C: LARGE RURAL CENTRE</td>
<td>60.5%</td>
</tr>
<tr>
<td>D: SMALL RURAL CENTRE</td>
<td>61.6%</td>
</tr>
<tr>
<td>E: OTHER RURAL</td>
<td>58.4%</td>
</tr>
<tr>
<td>F: REMOTE CENTRE</td>
<td>59.6%</td>
</tr>
<tr>
<td>G: OTHER REMOTE AREA</td>
<td>69.8%</td>
</tr>
<tr>
<td>H: UNKNOWN</td>
<td>68.0%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>78.8%</td>
</tr>
</tbody>
</table>

(ii) The total number of non-referred general practitioner (GP) attendances bulk billed under Medicare, by Rural, Remote and Metropolitan Area (RRMA) classification, for the twelve months ending; (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:
MEDICARE - NON-REFERRED (GP) ATTENDANCES

NUMBER OF SERVICES BULK BILLED BY RRMA (BASED ON PATIENT POSTCODE)

<table>
<thead>
<tr>
<th>Rural, Remote and Metropolitan Area</th>
<th>12 months ending 30 September</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>A: CAPITAL CITY</td>
<td>59,545,743</td>
</tr>
<tr>
<td>B: OTHER METRO CENTRE</td>
<td>6,079,175</td>
</tr>
<tr>
<td>C: LARGE RURAL CENTRE</td>
<td>3,189,733</td>
</tr>
<tr>
<td>D: SMALL RURAL CENTRE</td>
<td>3,425,197</td>
</tr>
<tr>
<td>E: OTHER RURAL</td>
<td>6,050,342</td>
</tr>
<tr>
<td>F: REMOTE CENTRE</td>
<td>412,408</td>
</tr>
<tr>
<td>G: OTHER REMOTE AREA</td>
<td>658,825</td>
</tr>
<tr>
<td>H: UNKNOWN</td>
<td>526</td>
</tr>
<tr>
<td>TOTAL</td>
<td>79,361,949</td>
</tr>
</tbody>
</table>

(iii) The average patient contribution per service (patient billed services only) for non-referred general practitioner (GP) attendances under Medicare, by Rural, Remote and Metropolitan Area (RRMA) classification, for the twelve months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:

MEDICARE - NON-REFERRED (GP) ATTENDANCES

AVERAGE PATIENT CONTRIBUTION PER SERVICE

PATIENT BILLED NON-HOSPITAL SERVICES BY RRMA (BASED ON PATIENT POSTCODE)

<table>
<thead>
<tr>
<th>Rural, Remote and Metropolitan Area</th>
<th>12 months ending 30 September</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>A: CAPITAL CITY</td>
<td>$11.51</td>
</tr>
<tr>
<td>B: OTHER METRO CENTRE</td>
<td>$10.46</td>
</tr>
<tr>
<td>C: LARGE RURAL CENTRE</td>
<td>$9.64</td>
</tr>
<tr>
<td>D: SMALL RURAL CENTRE</td>
<td>$9.44</td>
</tr>
<tr>
<td>E: OTHER RURAL</td>
<td>$9.23</td>
</tr>
<tr>
<td>F: REMOTE CENTRE</td>
<td>$12.72</td>
</tr>
<tr>
<td>H: UNKNOWN</td>
<td>$13.88</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$10.60</td>
</tr>
</tbody>
</table>

(iv) The total number of non-referred general practitioner (GP) attendances under Medicare, by Rural, Remote and Metropolitan Area (RRMA) classification, for the twelve months ending: (a) 30 September 2000; (b) 30 September 2001; (c) 30 September 2002; and (d) 30 September 2003, is as follows:

MEDICARE - NON-REFERRED (GP) ATTENDANCES

TOTAL SERVICES BULK BILLED BY RRMA (BASED ON PATIENT POSTCODE)

<table>
<thead>
<tr>
<th>Rural, Remote and Metropolitan Area</th>
<th>12 months ending September</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2000</td>
</tr>
<tr>
<td>A: CAPITAL CITY</td>
<td>70,096,858</td>
</tr>
<tr>
<td>B: OTHER METRO CENTRE</td>
<td>7,772,576</td>
</tr>
<tr>
<td>C: LARGE RURAL CENTRE</td>
<td>5,274,461</td>
</tr>
<tr>
<td>D: SMALL RURAL CENTRE</td>
<td>5,557,962</td>
</tr>
<tr>
<td>E: OTHER RURAL</td>
<td>10,356,317</td>
</tr>
</tbody>
</table>
Rural, Remote and Metropolitan Area

<table>
<thead>
<tr>
<th>Area</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>F:REMOTE CENTRE</td>
<td>691,774</td>
<td>704,972</td>
<td>676,694</td>
<td>682,899</td>
</tr>
<tr>
<td>G:OTHER REMOTE AREA</td>
<td>943,384</td>
<td>948,922</td>
<td>945,653</td>
<td>958,427</td>
</tr>
<tr>
<td>H:UNKNOWN</td>
<td>773</td>
<td>667</td>
<td>598</td>
<td>670</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100,694,105</td>
<td>100,533,196</td>
<td>99,688,561</td>
<td>96,451,891</td>
</tr>
</tbody>
</table>

(2) (a), (b), (c), (d), (e), (f), (g) & (h) For general practitioner providers of at least 1,000 non-referred attendances, the percentage of providers, by percentage of non-referred attendances bulk billed range, by Rural, Remote and Metropolitan Area (RRMA) classification of provider, for the twelve months ending 30 September 2003, is as follows:

MEDICARE - NUMBER OF GP PROVIDERS OF 1,000 NON-REF ATTENDANCES
BY PERCENTAGE OF NON-REFERRED ATTENDANCES BULK BILLED AND BY RURAL, REMOTE AND METROPOLITAN AREA

12 MONTHS ENDING 30 SEPTEMBER 2003 (YEAR OF PROCESSING)

<table>
<thead>
<tr>
<th>Percentage Bulk Billed Range</th>
<th>Capital City</th>
<th>Other Metro Centre</th>
<th>Large Rural Centre</th>
<th>Small Rural Centre</th>
<th>Other Rural Centre</th>
<th>Remote Centre</th>
<th>Other Remote</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A: &gt; 95%</td>
<td>4,050</td>
<td>349</td>
<td>159</td>
<td>142</td>
<td>262</td>
<td>44</td>
<td>99</td>
<td>5,105</td>
</tr>
<tr>
<td>B: 80-95%</td>
<td>1,506</td>
<td>195</td>
<td>90</td>
<td>100</td>
<td>168</td>
<td>25</td>
<td>22</td>
<td>2,106</td>
</tr>
<tr>
<td>C: 75-&lt;80%</td>
<td>452</td>
<td>59</td>
<td>26</td>
<td>38</td>
<td>106</td>
<td>7</td>
<td>13</td>
<td>701</td>
</tr>
<tr>
<td>D: 70-&lt;75%</td>
<td>460</td>
<td>41</td>
<td>50</td>
<td>50</td>
<td>61</td>
<td>84</td>
<td>7</td>
<td>710</td>
</tr>
<tr>
<td>E: 50-&lt;70%</td>
<td>1,959</td>
<td>155</td>
<td>169</td>
<td>237</td>
<td>416</td>
<td>38</td>
<td>27</td>
<td>3,001</td>
</tr>
<tr>
<td>F: 25-&lt;50%</td>
<td>2,180</td>
<td>256</td>
<td>296</td>
<td>350</td>
<td>519</td>
<td>33</td>
<td>18</td>
<td>3,652</td>
</tr>
<tr>
<td>G: 5-&lt;25%</td>
<td>1,416</td>
<td>242</td>
<td>287</td>
<td>276</td>
<td>453</td>
<td>24</td>
<td>17</td>
<td>2,715</td>
</tr>
<tr>
<td>H: &lt; 5%</td>
<td>351</td>
<td>100</td>
<td>91</td>
<td>66</td>
<td>153</td>
<td>18</td>
<td>6</td>
<td>785</td>
</tr>
<tr>
<td>Total</td>
<td>12,374</td>
<td>1,397</td>
<td>1,168</td>
<td>1,270</td>
<td>2,161</td>
<td>196</td>
<td>209</td>
<td>18,775</td>
</tr>
</tbody>
</table>

Notes to the Tables

These statistics relate to non-referred (general practitioner) attendances that were rendered on a ‘fee-for-service’ basis and for which benefits were processed by the Health Insurance Commission in the respective periods. Excluded are details of non-referred attendances to public patients in hospital, to Department of Veterans’ Affairs patients and some compensation cases.

The statistics provided in answer to (1) were compiled from Medicare data by patient enrolment postcode in the twelve months to 30 September 2003, while those provided in answer to (2) relate to the twelve months to 30 September 2003 and are based on major practice postcode in the September quarter 2003.

In answering (2), in general terms, practitioners were taken to be general practitioners, if they had more than 50 per cent of Schedule fee income in the September quarter 2003, from non-referred (general practitioner) attendances.