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SITTING DAYS—2004

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>10, 11, 12</td>
</tr>
<tr>
<td>March</td>
<td>1, 2, 3, 4, 8, 9, 10, 11, 22, 23, 24, 25, 29, 30, 31</td>
</tr>
<tr>
<td>April</td>
<td>1</td>
</tr>
<tr>
<td>May</td>
<td>11, 12, 13</td>
</tr>
<tr>
<td>June</td>
<td>15, 16, 17, 21, 22, 23, 24</td>
</tr>
<tr>
<td>August</td>
<td>3, 4, 5, 9, 10, 11, 12, 30, 31</td>
</tr>
<tr>
<td>September</td>
<td>1, 2, 6, 7, 8, 9, 27, 28, 29, 30</td>
</tr>
<tr>
<td>October</td>
<td>5, 6, 7, 25, 26, 27, 28</td>
</tr>
<tr>
<td>November</td>
<td>22, 23, 24, 25, 29, 30</td>
</tr>
<tr>
<td>December</td>
<td>1, 2</td>
</tr>
</tbody>
</table>

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

WEDNESDAY, 3 MARCH

Questions Without Notice: Additional Answers—
   Asia Pacific Space Centre ................................................................. 20633
Business—
   Consideration of Legislation ............................................................... 20633
   Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003—
      In Committee .................................................................................. 20634
      Third Reading .................................................................................. 20634
   Norfolk Island Amendment Bill 2003 [2004]—
      Second Reading .............................................................................. 20634
      Third Reading .................................................................................. 20650
   Aviation Transport Security Bill 2003 and
      Second Reading .............................................................................. 20650
      In Committee .................................................................................. 20656
      Third Reading .................................................................................. 20662
   Criminal Code Amendment (Terrorist Organisations) Bill 2003—
      Second Reading .............................................................................. 20663
      In Committee .................................................................................. 20663
Matters of Public Interest—
   Superannuation: Judges ........................................................................ 20673
   Howard Government: Standards ............................................................ 20675
   Environment: Genetically Modified Crops .............................................. 20678
   Superannuation: Judges ........................................................................ 20681
   Agriculture: Sugar Industry .................................................................... 20684
   Morant, Lieutenant Harry ‘Breaker’ ......................................................... 20688
   Handcock, Lieutenant Peter .................................................................... 20688
   Agriculture: Sugar Industry .................................................................... 20689
Questions Without Notice—
   Indigenous Affairs: Funding ............................................................... 20690
   Economy: Growth ................................................................................ 20691
   Indigenous Affairs: Funding ............................................................... 20692
   Foreign Affairs: Iraq ............................................................................ 20694
   Superannuation: Reform ...................................................................... 20695
   Trade: Free Trade Agreement .............................................................. 20696
   Superannuation: Preservation Age ......................................................... 20697
   Tasmania: Air Services ......................................................................... 20698
   Superannuation: Reform ...................................................................... 20699
   Property: Commonwealth Leasing Arrangements .................................. 20700
   Superannuation: Reform ...................................................................... 20702
Questions Without Notice: Additional Answers—
   Tasmania: Air Services ......................................................................... 20703
   Environment: Water Management ......................................................... 20704
Questions Without Notice: Take Note of Answers—
   Superannuation: Reform ...................................................................... 20705
   Trade: Free Trade Agreement .............................................................. 20710
Committees—
   Selection of Bills Committee—Report .................................................... 20712
CONTENTS—continued

Notices—
- Presentation .................................................................................................................. 20715
- Postponement ............................................................................................................... 20716
- Withdrawal ................................................................................................................... 20716

Invasion of Iraq Royal Commission (Restoring Public Trust in Government) Bill 2004 [No. 2]—
- First Reading ................................................................................................................ 20716
- Second Reading ............................................................................................................ 20717

Euthanasia Laws (Repeal) Bill 2004—
- First Reading ................................................................................................................ 20717
- Second Reading ............................................................................................................ 20717

Health: Midwife Services .................................................................................................. 20720

Committees—
- Environment, Communications, Information Technology and the Arts Legislation Committee—Extension of Time ............................................................................................. 20720
- Community Affairs Legislation Committee—Meeting ...................................................... 20720
- Academy Awards 2004 .................................................................................................. 20720

Matters of Public Importance—
- Howard Government: Employment Policies ................................................................ 20721

Committees—
- Scrutiny of Bills Committee—Report ............................................................................. 20735

Documents—
- Auditor-General’s Reports—Report No. 33 of 2003-04 .............................................. 20736

Committees—
- Rural and Regional Affairs and Transport Legislation Committee—Membership ..... 20736

Bills Returned from the House of Representatives ............................................................ 20736

Medical Indemnity Amendment Bill 2004,
- Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2004 and
- Customs Tariff Amendment (Paraquat Dichloride) Bill 2004—
- First Reading ................................................................................................................ 20736
- Second Reading ............................................................................................................ 20737

Committees—
- Legal and Constitutional References Committee—Report .............................................. 20739

Criminal Code Amendment (Terrorist Organisations) Bill 2003—
- In Committee ................................................................................................................ 20745
- Consideration .................................................................................................................. 20763

Adjournment—
- Foreign Affairs: Israel ................................................................................................... 20763
- Political Parties: Donations .......................................................................................... 20764

Documents—
- Tabling .......................................................................................................................... 20767

Questions on Notice—
- Australia Post: Licensees and Contractors—(Question No. 2404)............................... 20768
- Australia Post: Authorised Holidays—(Question No. 2405)........................................ 20769
- Australia Post: Dispute Resolution Procedures—(Question No. 2406) ......................... 20769
- Australia Post: Contractors—(Question No. 2407)...................................................... 20770
- Australia Post: Contractors—(Question No. 2408)...................................................... 20770
CONTENTS—continued

Australia Post: Security—(Question No. 2409) ........................................................... 20771
Australia Post: Business Centres—(Question No. 2410) ............................................. 20771
Australia Post: Licensee Advisory Councils—(Question No. 2411) .............................. 20772
Australia Post: Old Launceston Post Office—(Question No. 2412) ......................... 20772
Australian Broadcasting Corporation—(Question No. 2457) ..................................... 20773
Science: Chief Scientist—(Question No. 2506) ............................................................ 20774
Environment: Protection and Biodiversity Conservation Legislation Permits—
(Question No. 2518) ........................................................................................................ 20774
Wednesday, 3 March 2004

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Asia Pacific Space Centre

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.30 a.m.)—by leave—In question time yesterday, in response to a question from Senator Carr regarding government assistance to the Asia Pacific Space Centre, I said inter alia:

No direct grants were proposed straight to the company or anything of that sort.

I am advised that two-thirds of the $100 million strategic investment incentive—that is, $68.6 million—is for common-use infrastructure on Christmas Island and will not be paid as a grant to APSC. However, under the agreement between the government and the company, if any cost savings arise from the construction of that common-use infrastructure they could be paid to APSC by way of a taxable cash grant. The scope and timing of payments would be determined by my colleague the Minister for Local Government, Territories and Roads in consultation with APSC. The balance of the strategic investment incentive, $31.4 million, is managed by the Department of Industry, Tourism and Resources through a deed with APSC. Subject to meeting milestones in the deed, the $31.4 million would be paid to APSC as taxable cash grants but only for the purposes of spaceport infrastructure. I reiterate to the Senate that nothing—I repeat: nothing—has been paid to APSC to date as project milestones have not been achieved.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.32 a.m.)—by leave—In making a statement on the same matter I acknowledge, first of all, the fact that the minister has come in to correct the record at, I believe, the first available opportunity—he nods, and I certainly accept that that is the case—as is his obligation under the Prime Minister’s now much diminished code of ministerial conduct. I note that perhaps the minister should have shown this attention to detail yesterday in question time when he took the alternative approach of making some rather bizarre comments about Senator Carr being an enemy of the capitalist system. I think most senators and certainly any objective observer would have preferred during question time yesterday—instead of that eccentric and irrational response to, as I think most would agree, a very important question that Senator Carr was asking—the sort of attention to detail we have had this morning from this minister instead of that very inappropriate and silly response. It is right that he has corrected the record—the minister is obligated to correct the record—and we are pleased he has. We are displeased with the response that he gave yesterday, and I am afraid the minister’s behaviour in relation to this particular matter is now exposed for all to see.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.34 a.m.)—I move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004
Extension of Sunset of Parliamentary Joint Committee on Native Title Bill 2004
Question agreed to.

WORKPLACE RELATIONS AMENDMENT (CODIFYING CONTEMPT OFFENCES) BILL 2003
In Committee
Consideration resumed from 2 March.

The CHAIRMAN—The committee is considering the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003, as amended, and amendments (12) to (15) on sheet 4132 moved together by leave by Senator Murray. The question is that the amendments be agreed to.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading
Senator ABETZ (Tasmania—Special Minister of State) (9.36 a.m.)—I move:
That this bill be now read a third time.
Question put.
The Senate divided. [9.41 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes............. 32
Noes............. 36
Majority........ 4

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. * Heffernan, W.
Humphries, G. Johnston, D.
Kemp, C.R. Knowles, S.C.
Lightfoot, P.R. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Patterson, K.C.
Payne, M.A. Santoro, S.
Seuß, N.G. Tehen, T.
Terney, J.W. Treth, 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. Cherry, J.C.
Collins, J.M.A. Cook, P.F.S.
Crossin, P.M. * Denman, K.J.
Evans, C.V. Faulkner, J.P.
Forshaw, M.G. Greig, B.
Harradine, B. Hogg, J.J.
Hutchins, S.P. Kirk, L.
Lees, M.H. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. McLachlan, J.E.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D. Sherry, N.J.
Stephens, U. Stott Despoja, N.
Webber, R. Wong, P.

PAIRS
Hill, R.M. Conroy, S.M.

* denotes teller

Question negatived.

Senator Moore did not vote, to compensate for the vacancy caused by the resignation of Senator Alston.

NORFOLK ISLAND AMENDMENT BILL 2003 [2004]

Second Reading
Debate resumed from 4 December 2003, on motion by Senator Hill:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (9.44 a.m.)—The Norfolk Island Amendment Bill 2003 [2004] amends the Norfolk Island Act 1979 to make important changes to the electoral arrangements for the residents of Norfolk Island, the most significant of which is the reinstatement of Australian citizenship as a requirement for enrolment and for election.
to the Norfolk Island Legislative Assembly. In short, the bill aligns the electoral arrangements on Norfolk Island more closely to those of other Australian jurisdictions. The provisions of the bill seek to extend the right to vote in Legislative Assembly elections to all Australian citizens ordinarily resident on Norfolk Island for more than six months and establish Australian citizenship as a qualification for enrolment and for election to the Norfolk Island Legislative Assembly. At the same time, the bill preserves the enrolment rights of non-Australian citizens currently on the electoral roll.

Labor support the bill, but we do question the failure of the government to take action to support the integrity of the electoral processes on Norfolk Island. The government has failed to adopt the clear recommendation of two reports of the Joint Standing Committee on the National Capital and External Territories to amend the Commonwealth Electoral Act 1918 to guarantee the integrity of electoral processes on Norfolk Island. In failing to do so, the Howard government has failed to meet its obligations to the people of Norfolk Island. This is a matter to which I will return—a matter addressed in a second reading amendment I will move on behalf of the opposition at the end of my contribution to the second reading debate. The current electoral arrangements on Norfolk Island are unique, to say the least. The arrangements do, in fact, constitute a serious anomaly in respect of Australian electoral laws in that some Australian citizens are prevented from voting in elections while non-Australian citizens are entitled to vote and stand for election.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Order! Will the senators on my right having a loud discussion please leave the chamber.

Senator O’BRIEN—It is about time they were ejected. As I was saying, despite the protestations heard from some vocal residents of Norfolk Island, the territory is part of Australia and this parliament has an obligation to ensure that laws in all Australian jurisdictions are consistent with our obligations under international law. I acknowledge that Norfolk Island’s constitutional relationship with Australia has been a matter of contention since Federation. Its unique history, combined with distance from the mainland, has generated a strong sense of identity amongst Norfolk Islanders. But I do not believe the government’s proposal diminishes the identity of the islanders in any way.

I acknowledge that the Norfolk Island Amendment Bill 2003 [2004] has not been supported by some members of the Norfolk Island community; nor has it gained the support of the territory government. Senators will be aware that the Norfolk Island government has instigated two relatively recent referenda on electoral reforms. The first was conducted in August 1998 and the second in May 1999. Both resulted in a negative vote, which the Norfolk Island government has used to argue against electoral reform. It is noteworthy that the joint committee has found the design of the two referenda seriously flawed. The first referendum contained the use of emotive language, phrasing questions in order to get a particular response. For example, the following question was asked: ‘Do you feel that it is appropriate that the Australian government in Canberra dictates the electoral processes for Norfolk Island?’ It is the sort of polling Mark Textor and the Liberal Party pull out on special occasions and it deserves no acknowledgment or support.

The Norfolk Island government has opposed the bill for a range of reasons. Its most significant argument is that Norfolk Island has a unique political system and the practi-
cal effect of the Australian citizenship proposal may disenfranchise a considerable part of the population. This point is made by the territory government because about 16 per cent of Norfolk Islanders have New Zealand citizenship. It needs to be said, though, that the purpose of this bill is not the disenfranchisement of existing Norfolk Island enrollees but rather the protection of the democratic rights of all islanders, including Australian citizens currently denied the vote.

The bill preserves the rights of non-Australian citizens already on the electoral roll. The proposed citizenship requirements will only apply to new enrollees. Non-Australian residents will have the option of taking out Australian citizenship if they choose to play a role in Norfolk Island governance, and New Zealanders may acquire Australian citizenship without renouncing their New Zealand citizenship. The local Legislative Assembly has taken some action on electoral reform, and those moves are welcome. Nevertheless, the reforms proposed in the local Legislative Assembly Amendment Bill 2003 serve to maintain a serious anomaly in Norfolk Island electoral affairs—an anomaly inconsistent with the provisions of this bill.

In March 2000 an almost identical bill was defeated in the Senate. Labor did not support the 2000 bill because the Howard government, on that occasion, failed to adequately consult the Norfolk Island community prior to its introduction. The bill was referred to the Joint Standing Committee on the National Capital and External Territories in March 2000. The committee tabled the first of two reports on the governance of Norfolk Island in August 2002, entitled Norfolk Island electoral matters. In December 2003 the committee tabled the first part of its second report, entitled Quis custodiet ipsos custodes? For those who lack the classical bent of the committee chair, Senator Lightfoot—and I am being polite—the title of the committee report is ‘Who is to guard the guards themselves?’ That is a good question and one that the government has only half addressed in this bill.

The committee unanimously recommended some of the measures in the bill—that is, across all parties represented on the committee there was unanimity on these matters—but it also recommended, again unanimously, that appropriate legislation, including the Commonwealth Electoral Act 1918, be amended to ensure that elections and referenda on Norfolk Island are supervised by the Australian Electoral Commission. Unfortunately the government has elected to ignore this recommendation, just as it ignored the same recommendation from the same committee in 2002. Such an amendment is necessary to enhance and protect the integrity of the electoral processes on Norfolk Island. At the tabling of the committee’s latest report, Senator Lightfoot said:

... there will be a vocal, self-interested minority on the island that will criticise the committee’s efforts and attempt to stifle considered debate on the recommendations. If history is a teacher, this minority group will organise a petition condemning the report and initiate a referendum to demonstrate popular opposition to Federal Government ‘interference’ in the affairs of Norfolk Island.

The committee reported that some islanders appearing before it feared for their personal safety. Many chose to have their evidence heard in private. Some witnesses feared being ostracised and believed that they were at risk of reprisal. It has been alleged that acts of arson and physical assault have been used to intimidate some residents into leaving the island.

These findings serve to reinforce the strong basis for independent supervision of electoral processes on Norfolk Island. Labor supports open and accountable democracy and believes that all Australians should be
entitled to their democratic rights, not least those rights defined by the International Covenant on Civil and Political Rights. The residents of Norfolk Island are entitled to the same democratic freedoms provided to all Australians, and a democracy that is open, accountable and free from persecution or reprisal. As previously noted, there have been several reports on these matters. It is not enough for us to hear these recommendations and not put them into practice. It is now time for the Howard government to act and adopt all the committee’s recommendations without delay, in order to ensure that the real democracy we have in Australia is extended to residents of Norfolk Island. I note that there has been no mention whatsoever from this government of their reasons for not accepting these recommendations.

A Labor government will ensure that the people of Norfolk Island are provided with the support to allow them to participate fully in decision-making processes for the long-term future of their community. Labor will continue to take an active interest in ensuring a truly democratic future for the Norfolk Island community. While Labor support the passage of this bill, we believe it is appropriate for the Australian Electoral Commission to assume responsibility for the administration of elections and referenda on Norfolk Island. Recognising that this matter must be addressed in close consultation with the AEC and may require consequential amendment to other than Commonwealth electoral laws, I now move an amendment to the question that the bill be read a second time. I move:

At the end of the motion, add:

“(a) but the Senate notes that the Government has failed to adopt the 2002 and 2003 recommendations of the Joint Standing Committee on the National Capital and External Territories to amend the Commonwealth Electoral Act 1918 to ensure that all elections and referenda on Norfolk Island are supervised by the Australian Electoral Commission; and

(b) calls on the Government to so amend the Commonwealth Electoral Act 1918 to enhance and protect the integrity of electoral processes on Norfolk Island.”

Senator STOTT DESPOJA (South Australia) (9.55 a.m.)—My remarks will not be long and I will be happy then to defer to the chair of our joint standing committee, but I think you will find a strong confluence of views in the chamber this morning. I rise today as the Democrat spokesperson on local government and, in this case, external territories matters to speak to the Norfolk Island Amendment Bill 2003 [2004]. Senator O’Brien has made very clear in his opening remarks that the issue of reform, and electoral reform specifically, on Norfolk Island has been a contentious issue. Norfolk Island without doubt is a unique community. It is a very special community and a beautiful place, with a rich blend of culture and history. I know that it is important to the people on Norfolk Island that we are all conscious of the preamble to the Norfolk Island Act 1979, which states:

... the Parliament recognises the special relationship of the said descendants—of the settlers from Pitcairn Island— with Norfolk Island and their desire to preserve their traditions and culture:

... the Parliament considers it to be desirable and to be the wish of the people of Norfolk Island that Norfolk Island achieve, over a period of time, internal self-government as a Territory under the authority of the Commonwealth and, to that end, to provide, among other things, for the establishment of a representative Legislative Assembly and of other separate political and administrative institutions on Norfolk Island:

This bill goes to the heart of the Norfolk Island community. As has been remarked
upon, often there are members of that community who do not want what they perceive as undue or unwarranted Commonwealth interference in their local government or their electoral laws. But, as has been stated very clearly on the record today—and it is a notion with which I am sure all of us agree; certainly we do on the joint standing committee—Norfolk Island is indeed a part of Australia and the Commonwealth.

While I certainly recognise the desire of some people on Norfolk Island for their independence—for lack of a better word—the Democrats are also mindful today of the concepts of electoral fairness. They are concepts that are sought within this legislation. As those of us in the chamber would be aware, Norfolk Island has undergone no fewer than nine inquiries in the last five years. As Senator O’Brien pointed out, a similar bill to this was introduced in 1999. The Democrats, along with the Labor Party, opposed that bill on that occasion. We did so on the grounds that we felt more consultation should have been provided. That was our recommendation.

Subsequently the Senate did refer that legislation to the Legal and Constitutional Legislation Committee for inquiry. Representing the Democrats on that occasion was Senator Lyn Allison, who in the minority report further argued for a more comprehensive and wide-ranging consultation process. That was an appropriate course of action. I certainly believe that the government should always seek to strengthen its ties with, and its consultation and communication with, the people on Norfolk Island, particularly with the Norfolk Island legislature. Whether or not some people on the island believe it, that is something the joint committee has sought to do. Without a doubt, there have been times—and certainly introducing legislation in 1999 without adequate consultation was one—where the government may have been guilty of a lack of information and consultation with the people on Norfolk Island.

In June 2002, following an inquiry by the Joint Standing Committee on the National Capital and External Territories into electoral matters, as some colleagues will recall—representing us on that occasion was Senator Brian Greig—there was a recommendation, among other things, that Australian citizenship be reinstated as a requirement for eligibility to vote for and be elected to the Norfolk Island Legislative Assembly, as well as reducing the period for residence to vote to six months. In response to the committee’s recommendations, in March 2003 the Norfolk Island government passed the Legislative Assembly Amendment Bill 2003 (NI). This bill sought to amend the Legislative Assembly Act 1979 (NI) by requiring that Norfolk Island residents wishing to enrol to vote in the island elections and referenda needed to have resided on Norfolk Island for a minimum of 12 months—individual or aggregate—during the 2½ years immediately preceding the application for enrolment, so replacing the then current provision of a minimum 900 days in the preceding four years. It sought to address the citizenship requirements of the island by prescribing the qualification of residents to have either Australian citizenship, New Zealand citizenship or citizenship of the UK and Northern Ireland.

The essence of the Norfolk Island government’s argument has been that the appropriate threshold requirement to be able to vote for or stand for election in the Legislative Assembly should be the significant period of continuous residence on the island, and not necessarily Australian citizenship. It argues that the pool of eligible candidates for the Assembly, already small, could be significantly reduced. I suspect that there are a number of people in this place who have some sympathy for that argument, and it has
some merit. However, there are other pressing issues. The Norfolk Island government argues that the pool of eligible candidates could be significantly reduced. There is merit in that argument, but it is overwhelmed by other arguments.

The Norfolk Island government is also concerned that reducing the residency requirement of enrolment from 2½ years to six months could allow a number of transient Australian citizens to swamp a small electorate as a constituency neither well-versed in the distinctive ways of the island, nor committed to its long-term interests. Despite some chuckles around the chamber, as a joint standing committee we understand there is that element of concern, but we are confident that that will not transpire.

As Senator O’Brien said in his remarks, a couple of polls have been conducted on the island in relation to this issue. I note that in 1998, when the legislation was first proposed, the Norfolk Island community held a referendum in which more than 80 per cent of those who voted opposed the legislation’s goals. A year later, in May 1999, the community again voted against the proposed changes. I am not going to go into the merits of that or the polling involved. Senator O’Brien has already referred to the nature of that polling. Suffice it to say that we recognise that there is strength of feeling among some of the residents on the island on this issue. But there are also concepts of electoral fairness, appropriateness and transparency that we need to deal with today.

It is interesting, however, that in the minister’s speech at the second reading stage when tabling the bill and also in the explanatory memorandum there is no recognition of either the passage of a bill to modify the enrolment qualifications, or the reasons why the proposed changes have not been accepted by the Commonwealth government. So we need to acknowledge that the Norfolk Island government has passed legislation. Perhaps the minister could refer to that legislation in his remarks.

However, in saying this, the Democrats take on board the main points of the government today. The Commonwealth government is arguing, in essence, that it is a fundamental right of all Australians to participate in the democratic process at the local level and that being forced to wait 2½ years to exercise such a right is neither fair nor reasonable. We understand that the six-month qualifying period proposed by the Commonwealth government represents a compromise. It is designed to address those very concerns of the Norfolk Island residents and their government while taking into account the island’s historic background. This aligns the electoral arrangements in Norfolk Island more closely with other Australian parliaments and jurisdictions. The Commonwealth also argues that citizenship requires that non-citizens should not be able to decide what laws apply to Australian citizens in an Australian community. Both of these issues were part of the recommendations of the joint standing committee report that was tabled last December.

The minister and the joint standing committee have also expressed the concern that the existing electoral qualifications on Norfolk Island do not meet our international obligations under article 25 of the International Covenant on Civil and Political Rights, which provides that all citizens must have reasonable access to vote and be elected and to take part in public affairs. I acknowledge that pursuing the argument that something does not accord with an international principle does not always suit the government’s purposes. However, in this case, I am certainly inclined to agree with them. The Democrats have always held the concept of one vote, one value as fundamental. It has been a
platform of the Australian Democrats since our inception. So that is an important part of the debate too.

The Democrats acknowledge that Norfolk Island is a unique community. We are mindful of the tensions that have sometimes generated from the ‘perceived interference’ by the Commonwealth government. While we respect those special features of the island, we support the legislation before us today. I am guided by previous reports and by the comments of Senator Brian Greig, who was a participant in the joint standing committee, as well as by advice from our electoral matters spokesperson. The Australian Democrats support the legislation before us. We will also be supporting the second reading amendment moved by the opposition today.

Senator Lightfoot (Western Australia) (10.06 a.m.)—I thank the previous speakers, Senator O’Brien and Senator Stott Despoja, for their redoubtable contributions this morning. No doubt the recent proposal that came out of the report Quis custodiet ipsos custodes: inquiry into governance on Norfolk Island has caused some problems on the aforementioned, to the point where it has been brought to my attention as Chairman of the Joint Standing Committee on the National Capital and External Territories that a lobbyist hired by and acting on behalf of the Norfolk Island government is misleading members of the House of Representatives and Senate in respect of the report that I have just mentioned. The Norfolk Island government’s representative is asserting, among other things, that the report was the product of the committee’s secretariat, that somehow the report tabled in the House did not have the support or consideration of the committee members and presumably, therefore, that its recommendations ought to be given little weight. Nothing could be further from the truth.

A draft of the report reflecting the prior discussions and deliberation of the committee was prepared and then circulated to all members of the committee. This was in accordance with standard practice and procedure of the parliament for adoption, amendment or deletion to all or any part of the report.

Senator Ian Campbell—It is called the chairman’s draft.

Senator Lightfoot—Indeed, as the Manager of Government Business in the Senate, Senator Ian Campbell, has said, it is called the chairman’s draft, and it has been a practice in the seven years that I have been here and for many years prior to that for the chairman to correct the first draft. It includes the option by an individual member of the committee to append a dissenting report or dissenting comments. The text of the report and its recommendations were the subject of close and careful consideration by committee members. No such dissenting reports or comments were forthcoming. The report, with agreed changes from the committee members, was unanimously adopted as the report of the committee, that is, the final report. Let me stress: the report is the report of the committee members and, moreover, is a report endorsed by all committee members—government, opposition and Democrat members. It is regrettable that the representative of the Norfolk Island government has chosen to cast aspersions on the staff of the committee secretariat in this manner. Not only are such assertions completely false and misleading, they also cast a slur on the professionalism of our parliamentary staff. One can only wonder whether in making such baseless accusations the lobbyist is acting in accordance with the instructions given to him by his Norfolk Island government employer.

I turn now to the Norfolk Island Amendment Bill 2003 [2004]. This bill is the prod-
uct of an inquiry undertaken by the Joint Standing Committee on the National Capital and External Territories into Norfolk Island electoral matters in 2001 and 2002, which I attended. The committee tabled its report on this inquiry in June 2002. The committee’s inquiry involved extensive consultation with the Norfolk Island community and other interested parties. This included a series of public hearings both on Norfolk Island and in Canberra.

The committee made three unanimous key recommendations. First, the committee recommended that Australian citizenship be reinstated as a requirement for eligibility to vote for and be elected to the Norfolk Island Legislative Assembly with appropriate safeguards for the right to vote of all those currently on the electoral roll, that is, even if the Norfolk Island roll included non-citizens. Second, the committee recommended that all elections and referenda on Norfolk Island come under the supervision of the Australian Electoral Commission. After all, Norfolk Island is an integral part of Australia. Lastly, the committee recommended that the period for which an Australian citizen must reside on Norfolk Island before being eligible to enrol to vote be reduced to six months from what was considered by some people to be an outlandish 2½ years.

The committee reiterated all three of these recommendations in its report on Norfolk Island governance tabled just prior to parliament rising for the summer break last year in late December. We believe that a requirement for Australian citizenship in order to vote or stand for election to the Legislative Assembly on the island is necessary. We believe also that Australian citizenship is now a requirement, or is being considered as a requirement, for enrolment and election at local government level elsewhere in Australia. Given the Norfolk Island government’s participation in matters which have national significance, it is also vital to Australia’s national interest that the self-governing islands’ and territories’ ministers and other legislative assembly members be Australian citizens.

The committee was satisfied that adequate safeguards could be provided for non-citizens who are already enrolled, and noted both the relative ease with which a New Zealand citizen in Norfolk Island, for example, may acquire Australian citizenship and the opportunity that exists in both nations for holding dual citizenship. The committee also believes it is unacceptable that Australians who live on the island and make a significant contribution to the community should be deprived of the opportunity to exercise a fundamental democratic right by an appreciably longer qualifying period than that which applies in all other Australian jurisdictions. This situation is inconsistent with Australia’s obligations under the International Covenant on Civil and Political Rights and impinges upon article 25 of the covenant that enshrines the right of all citizens to vote and stand for election. It has also been condemned by the Human Rights and Equal Opportunity Commission.

Whilst acknowledging Norfolk Island’s traditions and culture as well as the concern felt by some islanders that these may be threatened by allowing relative newcomers a voice in island affairs, the committee did not accept that there is either a proven risk or a need for special protection particularly when such protection, entrenched in electoral law, serves to deny a basic human right to a group of citizens. The committee believed that the right to vote is the cornerstone of representative democracy. My fellow committee members and I are therefore concerned that Australians in an Australian territory are being denied the right to vote by being required to wait 2½ years or more to get on the electoral roll—that is, assuming they are permitted to stay on Norfolk Island by Norfolk Island’s
own immigration laws. Also of concern is the fact that non-Australians can be elected to an Australian legislature and determine the future of an Australian territory while Australian citizens, paradoxically, are being denied the vote. Any attempt to limit the franchise because of supposed concerns that people may be ill-educated or too ill-informed is reminiscent of the denial of the franchise to Aboriginal Australians and absolutely has no place in a modern democracy.

The proposed reforms ensure that no-one will lose any existing rights. No-one currently on the roll will be removed from that roll. The reforms will require a person to reside on island for six months before they can enrol. This is equal to the longest qualifying period in any Australian constituency. It is the same period as that which is required at the present time in Tasmania—that is, islanders are still in a better position than their mainland counterparts. The unique environment on Norfolk Island must be enjoyed by all and not just by a privileged few. I support the bill.

Senator HOGG (Queensland) (10.15 a.m.)—I rise to support the passage of the Norfolk Island Amendment Bill 2003 [2004] through the Senate. I think it is a very important piece of legislation. In doing so, I want to pick up on the words that were uttered by my colleague Senator Lightfoot about the actions of the consultant that has been employed by the Norfolk Island government. I firmly support those words, having now heard them from Senator Lightfoot, and offer my full support to the secretariat for the independent and very good stance that they are able to supply by way of support to the committee.

But one should always bear in mind that the chairman of the committee was the person clearly responsible for the drafting of the report in 2003, and other humble members of the committee, such as me, were given the opportunity to address that chairman’s draft when it came properly before the committee. For anyone to attack a public servant who is carrying out their duty in a fit and proper manner is quite wrong. It is a real abuse of the responsibility that has been given to the consultant that has been working for the Norfolk Island government.

Having said that, I think that this is a landmark piece of legislation in the sense that it is the beginning of what I perceive, as a member of the committee, to be the need to bring the governance of Norfolk Island into a modern era where there is proper transparency and proper accountability. They currently do not exist on the island. Whilst this piece of legislation does not address all the issues which one would hope might be addressed and which are currently under consideration by the minister and the government, at least it is a small step down that path.

As the Senate has already heard this morning, the matter was referred to the Joint Standing Committee on the National Capital and External Territories to look at the specific issue of qualification to vote in an election on Norfolk Island. That report, as outlined by previous speakers, came down in June 2002 and addressed the specific issues of Australian citizenship and Australian Electoral Commission control. That is very important because the Australian Electoral Commission is the independent electoral commission, and that recommendation was very much embodied, as has been outlined, in that report of 2002 and the six-month eligibility to vote. The provisions that previously prevailed were for 900 days residence during a period of four years, which was completely absurd. One could say that that was very manipulative of the electorate itself and could be used to advantage the self-interest and the best interests of the few peo-
ple without looking after the real interests of the whole of the community—that is, those who, in any ordinary circumstance under Australian law, would be entitled to vote in the election.

In the December 2003 report of the Joint Standing Committee on the National Capital and External Territories, entitled *Quis custodiet ipsos custodes: inquiry into governance on Norfolk Island*—not being proficient in Latin I will call it ‘Who watches the watcher?’—one notes a reference to an attempt made by the Norfolk Island government. As Senator Stott Despoja outlined this morning, that attempt was—in line with most things that the Norfolk Island government does, unfortunately—a pretty poor attempt indeed. In trying to stave off the inevitable arising out of the Joint Standing Committee on National Capital and External Territories’ report of June 2002, the provisions that were ultimately put into the Norfolk Island act by the Norfolk Island government fell well short of the mark. A proposition was put up which was completely and clearly not up to scratch and which tried to perpetuate substandard treatment of the basic rights of Australian citizens on Norfolk Island. That is clear. This has reinforced the Norfolk Island government’s inability to deliver legislation that would stand the test in any transparent and accountable democracy. That is the reason this legislation is being brought forward here today.

The explanatory memorandum to this bill highlights the protections that are put in place for Australian citizens. I will quote some points from the explanatory memorandum because I think it is important to have them on the record in this debate. It says on page 2:

In summary, it will:

Extend the right to vote in Legislative Assembly elections to all Australian citizens ‘ordinarily resident’ on Norfolk Island.

As Senator Lightfoot has pointed out, those people were being denied the basic right to participate in not only elections but also referenda that have a different purpose on the island. The second dot point says:

introduce an ‘ordinarily resident’ qualify period of 6 months for enrolment on the electoral roll.

Again, that is not an extraordinary provision but a fair provision by anyone’s test. The third dot point says:

establish Australian citizenship as a qualification for enrolment and for election to the Legislative Assembly.

The fourth dot point says:

ensure consistency in the calculation of the ‘residency period’ and, in particular, preserve the existing enrolment rights of persons under the age of 25 who are absent from the Island for education-related purposes.

The final dot point says:

preserve the existing enrolment rights of those non-Australian citizens on the electoral roll.

So the piece of legislation before the Senate today does not in any way seek to take away existing rights but seeks to bring the Norfolk Island electorate into conformity with the provisions that prevail throughout the rest of Australia. No-one should be under any illusion that this piece of legislation does take into consideration the sensitivities that might surround what is described by some people as the unique nature of the island; it does take into consideration, though, the fundamental basic rights that apply to all Australians and that should apply to all Australians. Having said that, I think there are some important things that this bill does not do, and they should be raised in this debate. The first thing that the bill does not pick up is the absurd five-year eligibility requirement to stand for office. Under the act, one must be not only resident on the island but also on the electoral roll for a period of five years.
Senator Lightfoot—That’s in the Norfolk Island Act, Senator Hogg.

Senator HOGG—Yes—to be eligible to stand for office on Norfolk Island, as I understand it. If I am wrong, someone will correct me, but that is how I have read the explanatory memorandum. If that is correct then that is completely out of whack and out of kilter with modern day standards throughout the Commonwealth of Australia. But that can be addressed in the fullness of time and I am sure that it will be. If it is the case then clearly this is an un-Australian principle, as it restricts unnecessarily the rights of Australian citizens to stand for office. That is something that is not tackled by this bill.

The second thing that the bill does not pick up from the Joint Standing Committee on the National Capital and External Territories 2002 and 2003 reports is the role of the Australian Electoral Commission. I think that is important and needs to be done. I am sure that the Minister for Local Government, Territories and Roads will explain that this picks up a previous piece of legislation and brings it back to this chamber without necessarily addressing any things that have happened since time has marched on. That may well be the case, but I think the role of the independent Australian Electoral Commission is terribly important in ensuring the transparency and accountability of electoral arrangements, whether they are on Norfolk Island or whether they are in the ACT, Western Australia or any other part of Australia.

The third thing that the bill does not pick up is the issue that was addressed in the 2003 report of the Joint Standing Committee on the National Capital and External Territories, where there was a recommendation for the eligible voters on Norfolk Island who are Australian citizens to be in a single federal seat. Whilst it was obviously not the intention of the government to pick up that recommendation in this piece of legislation, again it is worth while noting that that is something that really needs to be done.

As I said, the legislation fails to deliver a single federal seat for voters on Norfolk Island, as recommended in the Joint Standing Committee on the National Capital and External Territories 2002 report at page 141. I am going to dwell for a couple of moments on paragraph 4.106 of the report, because it expresses the committee’s view quite well when referring to the fact that Norfolk Island residents currently can attach themselves to a number of mainland seats but they have no discrete federal member or senator and they feel somewhat and in some way detached from the process. I think this is a real grievance on their part. Whilst I concede that it is not addressed in this legislation and that it is one of the recommendations in the government’s report—as it is commonly becoming known—that have gone to the government and to the minister for consideration, it is an important issue to be raised. Paragraph 4.106 of the report states:

... this anomaly should not be allowed to continue. The Committee strongly believes that, as a part of Australia, Norfolk Island must have direct representation in the Federal Parliament. In the same way that the Indian Ocean Territories have dedicated representatives in the Federal Parliament through their inclusion, for electoral purposes, in the Northern Territory, Norfolk Island must be provided with a dedicated representative in the House of Representatives able to speak on residents’ behalf and air their concerns.

If there were one single electorate that they were dedicated to then the Australian citizens who were eligible voters on Norfolk Island could go to those representatives with their grievances and could make a concerted effort to lobby them. The report recommends the seat of Canberra; the senators for the ACT would be the appropriate senators. I am not trying to give Senator Humphries and my
good colleague Senator Lundy more work necessarily—

**Senator Ian Campbell**—They can handle it.

**Senator HOGG**—I am sure they could. It would give the people on Norfolk Island a focus which they do not currently have.

*Senator Humphries interjecting—*

**Senator Lundy**—We will go to Norfolk Island together, Gary.

**Senator HOGG**—I can hear that there is a unity ticket developing between Senator Lundy and Senator Humphries, and I am certainly not about to encourage that. But clearly it is something that needs to be drawn to the attention of the parliament in this debate. Whilst it was not necessarily going to come out of the bill before the parliament, it is nonetheless a very important issue. The two issues that I have principally highlighted—that is, the Electoral Commission and the lack of a single federal seat—rely more in the area of transparency and accountability in government and the proper representation of the people on Norfolk Island. Whilst the Norfolk Island government may well be able to rally a lobbyist to beat a path around the corridors of the Senate and the House of Representatives, the ordinary citizens of that island have a very limited opportunity—unless they are attached to a mainland seat, as some of them are, and they are a diverse range of seats, as I understand it—to access their local senator and/or their local federal member. That would maybe overcome the need that is perceived by the Norfolk Island government.

I see these changes as being an important first step, a necessary step, which delivers rights to all Australian citizens that should not be denied to anyone. Whilst the other things that I have outlined are more desperately needed, there is a real requirement that the government does look closely at the report on good governance that was tabled. I know the minister and the minister’s office are looking actively at that. That is welcome. There is a need for some prompt action in this area so that good governance principles can lead to an accountable and transparent government on Norfolk Island and some confidence for the citizens of Norfolk Island in the parliament of Australia and in their own government’s operations on the island.

While some of that will be rejected by some people in the Norfolk Island government, that is fine. I understand that they will have a different view. I have come from a fairly unbiased position. I do not have a biased position on this even now; I have taken a very objective view of the duties I have been confronted with as a member of the Joint Standing Committee on the National Capital and External Territories and I believe that those duties have been fulfilled in a proper, responsible fashion not only by me but also by other members of the committee who have spoken here this morning—Senator Stott Despoja and Senator Lightfoot in particular. In closing, I support the second reading amendment moved by Senator O’Brien and I wish the bill a speedy passage through this chamber.

**Senator HUMPHRIES** (Australian Capital Territory) (10.34 a.m.)—I would like to address a few remarks to the chamber on the **Norfolk Island Amendment Bill 2003 [2004]** on the basis that it raises a very significant issue for any representative of a territory in this parliament, and that is the issue of the circumstances in which the Commonwealth should exercise its paramount power to intervene in what might be termed the internal affairs of a territory. It is an issue of some sensitivity. It is an issue that has raised its head even in the last few weeks with respect to the Australian Capital Territory and legislation that has been put through the ACT’s parliament, which some have suggested...
should be subject to the paramount exercise of power by the Commonwealth. It is true that the Commonwealth does clearly have a constitutional power to intervene in the affairs of the territories. That is summarised in the explanatory memorandum to this bill:

The Australian Government has a strong and legitimate interest and role in Norfolk Island electoral matters. Parliament retains ultimate responsibility for Territory electoral systems and parliamentary democracy consistent with the Constitution, Australian Government electoral law and policy, Australia’s international obligations (which include good governance and representative democracy), and the obligation to protect the basic individual rights of Australian citizens.

It is true, however, that it is important that the exercise of this paramount power not undermine the balance of responsibility the conventions have developed in the Australian political system. The Commonwealth, of course, has a paramount power in respect of all territories but it rarely exercises that power—certainly not these days. To exercise the Commonwealth’s paramount power in a capricious or willy-nilly fashion is to erode the spirit and intent of the self-government which in each case the Commonwealth has granted to those territories. Territories in that sense are like children reaching adulthood—they are capable of making most decisions for themselves and they are better off if they are encouraged to make those decisions for themselves. Frequent parental intervention inhibits their capacity to make sensible decisions on their own behalf. It is clear that the Commonwealth power should be exercised sparingly. The question thus arises: is this an appropriate circumstance to exercise that power? I would argue that it is an appropriate opportunity and I therefore indicate that the Senate should support the bill.

There are two arguments. The first is summarised very clearly in the title of the report of the Joint Standing Committee on the National Capital and External Territories, which asks: ‘Quis custodiet ipsos custodes?’ or ‘Who is to guard the guardians?’ There is a clear question as to whether Norfolk Island’s institutions are in fact appropriately democratic. We cannot assume that the Norfolk Island Legislative Assembly is able to make decisions for the peace, order and good governance of Norfolk Island if that assembly is not itself democratically constituted.

As we have heard, the basis for voting for the Legislative Assembly is quite different to other parts of Australia. The qualifying period is significantly longer than even the longest period of qualification applying in Australia, which is in Tasmania. Nine hundred days, which is 2½ years of residence, on the island is necessary before a person is entitled to exercise a vote in an election. Many who would qualify to be electors in other places in Australia would be ineligible to vote on Norfolk Island. Similarly, a significant number of electors are not even Australian citizens. For the Commonwealth to respect the democratic decisions of the Norfolk Island Legislative Assembly, the assembly itself must be democratically formed. It is clear that a question mark hangs over that issue. Democratic election is the cornerstone of true autonomy.

The second factor that should weigh in the minds of senators is the fact that the report, which has been the basis of this legislation, has been unanimously formed. Representatives of all the major parties in this place took part in the inquiry and reached a unanimous finding that intervention by the Commonwealth in the electoral laws of Norfolk Island was appropriate. We should give some weight to that finding.

High Court decisions and successive federal governments have confirmed that Australian citizenship is the fundamental prerequisite for membership of an Australian legis-
lature. This does not devalue differences in cultural background or country of birth. It simply means that all people aspiring to federal, state or territory parliaments should 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 a 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 one month or six months, remains the electoral norm. There is no evidence that such an approach has resulted in damage to local culture or traditions elsewhere in Australia.

In considering the need for electoral reform, it is important to bear in mind that the Australian parliament has the overarching responsibility to protect the rights of its citizens, wherever they may live in this federation. Indeed, it has an obligation to ensure that the laws in all Australian jurisdictions are consistent with national obligations under international law.

In summary, the arguments in favour of electoral reform are very convincing. Norfolk Island is part of Australia. Nothing is more fundamental than the right to participate in the democratic process at a local level. Being forced to wait for 900 days to exercise such a right is neither fair nor reasonable; it is arguably undemocratic. The requirement that members of Australian parliaments be Australian citizens is both inherent and sensible. I support this bill.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (10.41 a.m.)—I give heartfelt and genuine thanks to those senators who have contributed to the debate on the Norfolk Island Amendment Bill 2003 [2004]. It is often said by ministers summing up that they thank all the contributors and they sometimes say it with their fingers crossed behind their backs. But each of the senators who has contributed to this debate has added an interesting and illuminating perspective to this legislation, which has had a long passage to this point. It was presented originally nearly five years ago. It was effectively rejected on the basis that there was a perception of lack of consultation, particularly with the people of Norfolk Island. That is a legitimate issue. I am sure that the minister at the time probably would have rejected it but let us accept that that took place. No one can say anything other than that there has since been significant consultation with the people of Norfolk Island and that within this parliament there has been significant consideration given to this issue.

I should say at the outset, however, that subsequent focus on governance issues on Norfolk Island by the joint committee has overtaken many aspects of this legislation. This legislation did have its gestation back in 1999. The government and the committee have gone away and discussed it as requested at the time and—I think this is in response to a point made by Senator Stott Despoja—did in fact encourage the Norfolk Island Legislative Assembly to look at some reform of the Electoral Act themselves. In good faith they have done that, although it is quite clear they did not pick up some of the key principles and elements that the Commonwealth and the Commonwealth parliament focused on—that is, the citizenship aspects and the qualifying period.
I commend the Norfolk Island Legislative Assembly and the islanders for a genuine attempt to reform a system that had clearly become way out of whack with accepted democratic principles within Australia and, might I say, throughout the world. I do commend them for doing that but make it clear that in terms of some of the key principles—the qualifying period and the citizenship issue, which Senator Humphries has addressed very articulately—their attempt did not go far enough. So that did occur. The minister did encourage them and they responded in a way that in retrospect we think is inadequate although, without any doubt, well intentioned. I have no doubt whatsoever about the good intentions of the people of the island and the people in their legislature.

This bill does not seek to deal with some of the issues raised by either Senator Lightfoot or Senator Hogg, whom I thank in particular for their contributions to this debate. Of the three issues that Senator Hogg raised, the first issue of the five-year residency test has been raised as a concern by people on the island, even with me personally on my first visit to the island, but it was not an issue that was addressed by the committee's most recent report. I know that the committee will be further consulting on its report and on its next report, which will be looking at financial matters, as I understand it. I would encourage the committee to consult with the Norfolk Island community and give consideration to the five-year residency test. It is clearly something that looks like being anomalous. I am very happy to look at it but only after thorough and quality consultation with the people whom this will affect most—that is, the people on the island.

The second point that Senator Hogg raised of the Australian Electoral Commission's oversight or running of elections on the island has been brought up subsequent to this legislation. We did not seek to address that. However, we will be addressing it in our response to the committee's report and we are, without pre-empting our response, attracted to the merit of that idea, as we are to much of the report. But I do not want to pre-empt the report. I will be travelling to the island as soon as I can arrange it, practically speaking. It has obviously been a difficult time for senators to get out of Australia and across to Norfolk Island with two weeks of sittings and one week off, and with estimates. It has been a very heavy parliamentary sitting schedule, as we all know, but I will be getting across there just as soon as I can to have my own consultations and discussions and to get feedback first hand from the Norfolk Island legislators, its leadership and also as many community groups and people as I can meet in the time I will have available.

I might say, by way of parenthesis, that one of the problems of this job and of having the privilege of being the territories minister is that when you visit one of our territories—either Norfolk Island, Christmas Island or Cocos Island—you never really have enough time to get to know it. You are always rushing in between parliamentary sittings and other responsibilities. Having had the great privilege and pleasure of visiting each of those territories very early on in my time as minister, I can say that they are extraordinary pieces of Australia and extraordinary places. It is certainly one of my regrets that on my first visit and on those I am now scheduling to Norfolk, Christmas and Cocos I have found there is just not enough time to appreciate the beauty and also, very importantly, to get to know the people and characters in each of those territories. But that is life. It is the same for all of us. We visit lots of interesting parts of our country in our roles as senators. In my particularly privileged position of being a minister in the government I have found that you never get enough time to
spend what, in a cliched term, is quality time in any of these parts.

Having got that off my chest, the third issue Senator Hogg raised was that of voters from the island having direct representation here in the Commonwealth parliament. Again, that is not an issue that this legislation sought to address but it is an issue, and a very important issue, that the Commonwealth will address in its response to the committee report. I will give an indication of my timing for a response because Senator Hogg and Senator Lightfoot have privately sought it. I will, as I said, be travelling to the island as soon as I can. I hope that that will be over the next few weeks. Once I have done that we can look at a response not too long after. I would like to give a timely response. It is fair to say that a lot of people on the committee, the committee secretariat and, most importantly, the people on the island who have given their time to the process deserve a timely response, and I will ensure that that happens.

I will say only a couple of other things in my summing up. Firstly, the reforms seek to bring Norfolk Island electoral matters closer to what is the norm in Australia and what would be accepted internationally. They do retain existing rights for people on the island. Even with the qualification provisions and once, as I understand it, Tasmania have reformed their law—I understand they are coming back from six months to one month to be in line with all other jurisdictions—the situation on Norfolk Island will still mean you have six times the waiting period you have on the mainland. I suspect that that will be something that gets addressed in a subsequent parliament, probably long after I have left the portfolio and possibly left the parliament. The reality is that under the Norfolk Island legislature’s own provisions they are looking at 12 times the norm. We are giving them six times the norm and we are also saying that you should be an Australian citizen. They are important things.

In terms of principle, and Senator Humphries was getting closest to this issue in his contribution, regardless of where you live in Australia many of the issues that confront Norfolk Island—from looking at it, reading an enormous amount about it and visiting it, as I said, all too briefly—are similar to what occurs in regional towns of a similar size. You have a community that is physically removed from the centre of power in Australia. As a Western Australian I grew up feeling that. You always have a very real sense, if you grow up in a place like Perth or a Western Australian town or Brisbane or other places that are a long way from Canberra, that you are distant from the centre of power. You also feel resentment at having stuff imposed on you by ‘Canberra’, dare I say it. It is called ‘Canberra’, although that is not a fair reflection on Canberra as a place to live, Senator Humphries and Senator Lundy. But there is this typical association of the national capital of any country—be it Washington or Moscow, no doubt—with a sense of having stuff imposed on you from the centre of power. In Australia it is Canberra.

**Senator Lundy**—Just say ‘the federal parliament’.

**Senator IAN CAMPBELL**—Yes, we do, but it is a common shorthand that the media use and it is often not fair on the very good people who live in the national capitals.

**Senator Lundy**—Indeed, and they get very upset about it.

**Senator IAN CAMPBELL**—And I have upset them accidentally every now and again. Having grown up for much of my life in places like Perth or Brisbane—I spent most of my life in both of those cities—I do understand that you do have that sense of having stuff imposed on you. I am very sympathetic to, and empathetic with, the people
of Norfolk Island in relation to this, but I know that there are many people on Norfolk Island who do yearn to have the same sorts of democratic rights that all other Australians have.

If you are going to build a pluralistic society, it is very important that people in a place like Norfolk Island who do not necessarily agree with that sort of received wisdom feel that they have got the right to pursue a different way of doing things and to have the opportunity to bring others with them. I am not saying that that is not the case on Norfolk Island, but I know that if you do not have some of these fundamental democratic principles at work the possibility of pluralism will be hampered. Some will say, and I respect their right to do so, ‘This is a heavy-handed Commonwealth government,’ or, ‘That nasty "b" of a minister is imposing his will. He’s just as bad as all the others. He’s as bad as Reg Withers. He’s as bad as Wilson Tuckey.’ We are the nasty people. They see it as, ‘We are from the federal government; we’re here to help you.’ We will have to wear that, but I am sure—in fact, I know—that there are many people on Norfolk Island who do yearn to have similar and appropriate democratic rights that are available to all other Australians.

I am very heartened by the support of the shadow minister, Senator O’Brien, and by the genuine nonpartisan nature of this debate. It encourages me, and I do thank people for that support. We will not oppose Senator O’Brien’s second reading amendment. I even gave thought to saying I would vote for it. The only reason I will not do that is that I think it does pre-empt my response to the committee’s report and I think that would be unfair to the committee process. It would be poor process in itself and particularly unfair to the Norfolk Island people, whom I have promised to come and consult with, if I were to vote for it today, because I would be pre-empting that report. But we have no objection to it and will not be opposing it. I commend the bill to the Senate.

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.

**AVIATION TRANSPORT SECURITY BILL 2003**

**AVIATION TRANSPORT SECURITY (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2003**

Second Reading

Debate resumed from 10 February, on motion by Senator Vanstone:

That these bills be now read a second time.

*Senator O’Brien* (Tasmania) (10.56 a.m.)—I rise to give the opposition’s view of this important bill. The events of September 11, 2001 changed the way we live. The fact and televised images of a jet passenger aircraft being used as a weapon of terrorism made an indelible impression on all of us. Aviation has been crucial to the development of Australia, a continent so vast that air travel is the only basis upon which Australia has been able to develop in the modern age. Air travel is also, quite literally, the lifeblood of many parts of rural and regional Australia. And when you think about the Norfolk Island Amendment Bill 2003 [2004], which we have just been talking about, and the Torres Strait, which I have been to recently, as well as many other parts of this country, it is critically important.

It is vital for us to enable the great regional enterprises, such as Fletchers International, AWB or Elders, and their executives not only to operate where they create jobs
but also to interact in our major cities and internationally. Regional air services also play a role in enabling regional Australians, particularly Indigenous Australians, to have some sort of access to vital services, such as specialised medical care in our major cities, and make getting kids from remote parts of Australia to school a manageable undertaking. Of course, air travel is absolutely vital to our tourism industry, an industry which employs around 550,000 Australians and which offers regional areas not only a degree of ongoing economic activity but also the promise of much more. For all these reasons, it is vital that air travel in Australia not only be safe from the scourge of terrorism but also be seen to be safe. For our tourism industry and regional areas to achieve their full potential, Australians and overseas visitors to this country should be able to board an aircraft with confidence that every step has been taken to ensure their safety. Besides the obvious need to protect human life, these other considerations are vital.

As we consider the new aviation industry security framework outlined in the Aviation Transport Security Bill 2003, we must remember that the aviation industry has been security alert for many years. In that regard, the aviation industry is better placed than the maritime and port industries, where the same security culture has not been in place. Indeed, for many Australians, being screened at the airport was one of the few times when they ever encountered security processes and procedures. Increasingly this is changing as more and more Australians are being screened and monitored as they go about their daily life and business. This is the daily impact of the curse of terrorism for Australians.

While aviation has had for many years a highly regulated security environment, we learned on 11 September 2001 that more needed to be done. This bill is the Australian government’s response. It puts in place a new aviation safety regime in response to that new sense of insecurity. I should point out that the Australian government had early warnings that more needed to be done on aviation security. A 1998 Australian National Audit Office report noted our solid regulatory framework but clearly said there was room for improvement. It took the Minister for Transport and Regional Services until April 2001 to respond to that warning when he introduced a bill that disappeared before it was debated because he did not finalise the draft regulations. That bill was heralded as the first stage of an overall proposal to enact reform within aviation security. Modernised standards were going to be created in separate and specialised regulations. These regulations were planned to replace the provisions deleted from the Air Navigation Act.

In early 2002 the minister, almost oblivious to the events of September 2001, reintroduced the same bill. He had again not completed the work on the new modernised regulations and dithered over them for almost 12 months. In late 2002 the minister had a total change of approach to fixing aviation security, and his plan to make reform through the modernised regulations was ditched. In January 2003 the Australian National Audit Office released findings from a follow-up audit to the 1998 report. In a disgraceful state of affairs the Auditor-General found that, five years after his 1998 report, nothing had been done to implement its recommendations.

After the minister’s total shift in direction in 2002, it took until March 2003 before we learned what his new approach would be. It was at that time that we saw the bill which is before us today. The development and passage of this bill have been fraught with delays and obstructions, but none from this side of the chamber. The blame for the delays in the passage of the bill sits firmly with the
transport minister, who until recently could not decide if he still wanted the job and therefore was not focused on the serious task at hand.

This is a complex bill that establishes a whole new aviation security framework. The poor consultation with industry, especially unions, was unnecessary and generated a level of concern. In saying this, I can advise that this bill has come a long way. I am not convinced that the bill addresses all industry concerns and those of the travelling public, but it has been modified significantly. To his credit, the transport minister cooperated to permit negotiations between his department, the shadow minister, unions and industry. Those negotiations have arrived at significant compromises and have helped to ensure that all affected parties have the amendments, information and understanding required to support the bill. For example, a number of the government amendments accepted in the House of Representatives allay the concern of unions that the definition of ‘unlawful interference in aviation transport’ may impact on their right to take industrial action.

The words in this amendment were negotiated with the opposition and in consultation with the unions. The opposition are pleased that the government accepted our amendment in the other place to ensure that Airservices Australia is formally defined as an aviation industry participant. The air traffic control and national airways system infrastructure is too important for the safety and security of flight for there to be any room for doubt or confusion about the need to have rigorous security plans. I also welcome belated recognition by the government of the need to provide timely advice to airlines about persons in custody. I welcome the decision of the government to develop drafting instructions for regulations associated with this bill to set a minimum notification period of 48 hours to airlines for persons in custody.

There is a range of other issues that require further government consideration and attention, but the new bill has adopted a whole new vocabulary. This is not the type of change that can be fixed by amendment. The call to have a new, distinct terminology and system is fundamental government policy underpinning the bill. There was an opportunity to take and build on the current system instead of rewriting it for no obvious advantage. So, while the opposition do not support it and we agree with the industry that it will create unnecessary confusion and exacerbate the amount of change to be comprehended, it is not something that we will attempt to amend. At the same time, this is not significant enough to cause the opposition to vote against the bill. This is just another example of the minister not appreciating the detail and being too distant from the industry and the challenges it confronts. The opposition do urge the continuation of detailed consultation with industry to ensure that the implications of this policy decision are minimised. We also call on the government to discuss appropriate ways to ensure that the regulations spell out agreed, clear and consistent roles and responsibilities for landside security between the different operators and authorities.

The bill is deficient in other ways that cannot be easily addressed through amendments. The shadow minister in the other place, Mr Martin Ferguson, referred to the example of the accountability and governance mechanisms. They are not clearly spelled out with respect to security incident investigations. At the moment we have the Department of Transport and Regional Services being the fount of all knowledge and control. They write the rules and regulations, they monitor compliance, they investigate the breakdowns and breaches of their rules...
and regulations and they are responsible for ensuring that any flaws are fixed. The opposition submit that there needs to be more separation of these functions to ensure that the system is properly accountable.

The model for aviation safety regulation, compliance and accident investigation is a decent starting point of reference. The security incident on the QF1737 flight to Launceston is a case in point. The incident occurred on 29 May last year. The department said that they would investigate, but a public report on that investigation has yet to surface. I understand that the shadow minister, Mr Martin Ferguson, has been privately briefed on that investigation and that in his mind the brave actions of flight crew aboard QF1737 only highlight the security advantage of maintaining current flight attendant staffing complements. I regularly travel on flights to Launceston, including that flight. I encounter members of that crew regularly and I am grateful that they continue to fly and to provide the service that they do. Their actions in that event highlighted the role they play beyond what the public normally see of giving a briefing and then providing refreshments to passengers. That is an example that places in my mind the critical importance of maintaining staffing complements, irrespective of the cost pressures of airlines and the desire to provide cheaper flights.

In evidence to the recent inquiry by the Senate Standing Committee on Rural and Regional Affairs and Transport into the current version of the draft regulations, the shadow minister was pleased to see that the department was paying more attention to the issue of unscreened service personnel and unchecked vehicles going airside. The evidence provided by airport operators and airlines on the operation of this bill also revealed deficiencies in the administration of airside security identification cards—or ASICs, as they are known. These cards are a critical part of the security net at airports. The government has made significant changes in terms of requiring an ASIO politically motivated violence check of applicants for ASICs and shortening the time for renewal. However, in evidence to the committee it became clear that not enough is being done. We were advised that hundreds of ASICs go missing, often when staff leave employment without handing them back to their employer. The opposition is not convinced that the system can be improved by an amendment to the bill, but there is ample opportunity for the regulations to be more rigorous. There is a clear need for stricter controls, crosschecking and audit arrangements for ASIC users to minimise the number of missing passes.

Security at our regional airports is another area where the government is wiping its hands because it is too hard. The public hearings of the Joint Committee of Public Accounts and Audit around regional Australia revealed a range of concerns from members and senators from both sides of their respective chambers. Regional Australians must have their security respected, and we must also be mindful that lax regional security can undo the most stringent measures in place at major airports and population centres. Labor leader Mark Latham has made the point that, whilst the Howard government has signed the Australian taxpayer up to the dubious ‘son of Star Wars’, we have regional airports in this country with 100,000 passenger movements a year but no screening facilities for passengers or their luggage. A Latham Labor government will provide focus on the delivery of proper airline security for the people of regional Australia at airports such as Burnie, Devonport, Albury, Gladstone and Port Macquarie—to name just a few. Labor appreciates that local airport managers need to be involved in decisions about their airports. The Howard government seems to
have the money for ‘son of Star Wars’ but, when it comes to security at regional airports, it only has excuses.

This bill has come a long way, and the opposition will support it to ensure that Australia finally gets the comprehensive security framework that is clearly needed. The opposition will continue to work with the government to ensure that transport security is rigorous and effective. We are keen to see this legislation pass. We have been constructive in our approach to the legislation. We say that the delays in the promulgation of this legislation are a significant point of criticism of the government, and that has been highlighted by ANAO reports. We are happy to see this bill come into law. We would be happier still if the government attended to some of the problems we have outlined, particularly with regard to the promulgation of appropriate regulation. We would like the government to continue to consult with all aviation industry participants and continue to focus on the need for some changes to the regime they are proposing, but this bill is a start and we will support it.

Senator ALLISON (Victoria) (11.11 a.m.)—I indicate that the Democrats will also support the Aviation Transport Security Bill 2003. It creates a single security regime for the aviation industry. It includes provisions requiring aviation industry participants to prepare security plans and it creates a demerit point scheme to enable enforcement of the regime. It also creates new arrangements for the issuing of aviation security identification cards, or ASICs.

The bill was the subject of an inquiry by the Senate Standing Committee on Rural and Regional Affairs and Transport. It held two hearings on the bill, as well as an additional inquiry into the draft regulations. The committee heard from a number of industry participants and interested parties who, while expressing a desire for the bill to be passed and for the new regime to be adopted, raised a number of concerns about the legislation. Many of those concerns were identified. Airservices Australia expressed concern to the committee that, unlike other organisations, it was not considered by the department to be an aviation industry participant, which is curious. The committee heard evidence from Airservices Australia in relation to its concerns. I understand that DOTARS has undertaken further consultations with Airservices and that the matter is now resolved.

Concerns were also raised about the new ASIC issuing process. Under this legislation all employees working at an airport will need to undergo an ASIO check. Concerns were raised about the lack of transparency in this process and the lack of information available to employees appealing an unsuccessful ASIO check. Through information provided to the committee subsequently, and through the second inquiry held into the draft regulations, these concerns appear to have been allayed as well. Aviation industry participants who are ASIC issuing authorities expressed concerns about the introduction of the demerit point scheme and how this might impact on them. Currently, ASIC issuing authorities are confronted with the problem of ‘missing’ or lost ASICs. The committee heard that a large number of ASICs are unaccounted for, are lost, go missing or are just not returned.

Issuing authorities are concerned that they often issue ASICs to persons who they do not employ or for whom they are not responsible—for example, an airport may issue ASICs to employees working for a contractor. When an employee ceases to work for the contractor and fails to turn in their ASIC, the issuing authority—in this case the airport—is held responsible. Under the new regime these issuing authorities may incur demerit points. I understand that the depart-
ment does not intend to introduce the demerit point scheme from the outset and it may be some years before the scheme is introduced. I certainly hope that the department does undertake further consultation and that it works closely with the industry, and with ASIC issuing authorities in particular, to address those concerns and to ensure that issuing authorities are empowered to have greater control over ASICS. It might also be necessary to re-examine the demerit point scheme, in particular to look at which parties incur demerit points when ASICS go missing.

We continue to have concerns about division 7 of the bill, which deals with special security directives. These can be made by the secretary when an imminent threat to security is identified. We are concerned that offences against this section are strict liability offences and believe that the burden of proof in these instances should rest with the government, not with the defendant. While I recognise that the government foresees that these directives will usually only be directed at airport operators or airlines, I think it is not inconceivable that individual members of the public may unwittingly find themselves in breach of a directive when an imminent threat to aviation is identified or is said to be identified. Accordingly, when we go into committee I will move amendments that reverse the onus of proof and allow defendants the benefit of legal or other advice if they are determined to be in breach of a directive.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.16 a.m.)—I do not intend to add anything to the comments that were made in the second reading speech on the Aviation Transport Security Bill 2003. I thank other senators for their contributions to the debate. I would like to respond, however, to one matter that was raised by Senator O’Brien.

Senator Forshaw—You just said you didn’t want to say anything.

Senator IAN CAMPBELL—There is one point I would like to make. I was fascinated to hear Senator O’Brien refer to the thought bubble emanating from the current Leader of the Opposition about regional airport support. It is not really a policy yet, but I would like to know what the policy is so that we can cost it. The Leader of the Opposition has gone to a couple of regional airports and suggested that more regional airports should have full security. Our policy, of course, is to have an intelligence based and a threat driven security regime. What I would like to know from the opposition—and I am sure Senator O’Brien could give us the full details in the committee stage—is exactly where your cut-off would be for regional airport security. You have named a couple of airports in key marginal seats. Maybe the policy is that Labor will upgrade regional airport security in key opposition marginal seats. Senator O’Brien mentioned the figure of 100,000 air passenger movements. That is an interesting threshold. If that is in fact the policy, I would like to know it.

It is very important that people who use important regional airports have an understanding of what the policy is here. The coalition have been quite clear about our policy. We have a system that is based on intelligence driven threat assessment. Our advice is that there is no threat warranting the extent of the measures being advocated by Mr Latham as he moves into the odd marginal seat here and there and says, ‘We’ll give you more security.’ I think it is important that regional airlines and passengers of regional airlines understand the policy options of the opposition, because it is not a cost-free exercise. It is not cost free to the regional airlines and it is not cost free to the travelling public; it does impose further costs on regional airlines and regional airports. It is a pathetic
approach to policy on the run—I would not even call it policy; it is in fact a thought bubble—when Mr Latham wafts into town and says, ‘You haven’t got security as good as Kingsford Smith. Let’s give this airport better security.’

What does better security mean in these regional airports? It means putting in very expensive equipment and also having staff available around the clock to operate that equipment—well-trained staff who in some circumstances would obviously have to be accommodated in those regional places. So it can be very expensive. What you have to do is make a risk assessment and then do a cost-benefit analysis of the approach. That is the approach we have brought to this policy, and I would be fascinated to hear what the opposition’s approach is. Is it a populist, marginal seat driven strategy to give the current Leader of the Opposition something to say when he does dare to zip outside the capital cities—when he jumps on his bus of opportunism, drives out into a regional area, looks out the window and says, ‘Gee, this is what the rest of Australia looks like. A regional airport, let’s do something here’—or is it a well thought through policy?

The history of the Labor Party on policy in this area is that it is never well thought through; it is usually playing catch-up. It is usually out of touch with reality. Mr Acting Deputy President, as a good union man you would be proud of Senator O’Brien’s contribution. What was the main focus of Senator O’Brien’s contribution? It was not so much a concern about airport security. It was not so much about aviation security. It was not about the travelling public’s security. It was not about the concern that all people in the world share post September 11—the events that shocked the world when nearly 3,000 people were killed because of the terrorist activities of Osama bin Laden and his followers. What was it about? It was about consultation with the trade unions. That was the opposition’s incredible contribution to this debate: ‘We forced the minister to consult with the unions.’

What a wonderful contribution!

We have brought a fair dinkum approach to airport and airline security. We have got a comprehensive package here. The approach of Mr Latham and Senator O’Brien is to waft into the odd regional town and say, ‘We think we need Kingsford Smith style security at this regional town.’ Mr Latham does not live in a regional town. We wonder where he lives sometimes. With those words, I appreciate the seemingly grudging support of the opposition and commend the bill to the Senate.

Question agreed to.

Bills read a second time.

In Committee

AVIATION TRANSPORT SECURITY BILL 2003

Bill—by leave—taken as a whole.

Senator ALLISON (Victoria) (11.23 a.m.)—by leave—I move Democrat amendments (1) and (2) on revised sheet 4166:

(1) Clause 73, page 62 (line 21), omit subclause (3).
(2) Clause 74, page 63 (line 1), after subclause (1), insert:

“(1A) To avoid any doubt, subsection (1) does not apply to confidential communications with a legal practitioner engaged to defend the person in proceedings under this division”.

These are standard amendments that the Democrats put on many of the bills that come before us to do with the onus of proof. It is our strong view that the burden of proof ought be that of not the defendant but the government. It is possible to imagine a situation where an individual might, for instance,
leave a bag in an airport not knowing that this was not something they should do. They could be the subject of a very substantial fine of $5,500 and 50 penalty units, which is what is in this legislation for an individual. Our amendment (1) would effectively reverse that onus of proof. The second amendment is to do with the rights of an accused person to seek advice from others. At the present time the bill would deny the ability of a defendant to discuss the matter with anyone else. We feel this, too, is a fundamental problem in this legislation.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.25 a.m.)—The government will oppose the amendments for a couple of good reasons. In relation to the strict liability, I think it is important that the Senate understands that under the existing regime, which was introduced in 1995, there is in fact strict liability. So to accept the Democrat amendment in this post September 11 environment would be a significant reduction in the measures available to enhance airport security, particularly in relation to the use of special security directions. Although the breach of one of these special security directions is a strict liability offence and, as I have said, mirrors the existing strict liability in the 1995 act, it does ensure that a person who may have, in Senator Allison’s case, left a bag in an area and returned entirely innocently to collect it is of course protected. The bill provides that the offence has not been committed if the person has a reasonable excuse. A reasonable excuse means a justification for conduct which is otherwise illegal where that justification is considered appropriate by a court given all the circumstances in the conduct which occurred. So there is a protection for that person. But in these cases we regard, just as the parliament did back in 1995, that strict liability is important.

Legal professional privilege applies to confidential communications between a client and a client’s legal adviser for the sole purpose of giving or receiving legal advice. That is codified under section 118 of the Evidence Act 1995, coincidentally. The full bench of the High Court, in Daniels v. ACCC, recently ruled that statutory provisions are not to be construed as abrogating important common law rights, privileges and immunities in the absence of clear words or a necessary implication to that effect. As currently worded in the bill, legal professional privilege is therefore not extinguished. It means, then, that the amendment proposed by Senator Allison adds nothing in a legal sense. However, it does have a danger attached to it. The addition of the words suggested by Senator Allison would confuse the matter and make it necessary for words to this effect to be added wherever common law privilege exists. We therefore do not support the amendment.

Senator O’BRIEN (Tasmania) (11.28 a.m.)—As to the proposed amendment to omit subclause (3) from clause 73, we say there is a vast body of legislation to support strict liability for offences that carry a monetary penalty rather than a custodial penalty. As the penalty for a person other than the aviation industry participant is a fine, strict liability is an accepted legal requirement. Clause 73(2), as the minister has said, provides for those instances where a person has inadvertently failed to comply with a special security direction, and if the person has a reasonable excuse then no offence is committed. So although it is described as strict liability there is a means to avoid that strict liability in those circumstances. We do support strict liability applying to special security directions. We think that they should have a special status. We therefore oppose this amendment proposed by the Democrats.
With regard to clause 74 and changes to insert a new subclause (1A), the insertion of a paragraph to waive confidentiality requirements for disclosure to legal representation is, in our view, entirely unnecessary. Our advice is that the High Court has recently reaffirmed that common law takes precedence over legislation of this nature, and common law provides for appropriate disclosure to legal representatives. That is not to say that we do not support the concept in the legislation. We are just concerned about supporting an amendment that is unnecessary and that also may present other problems which we do not understand. We are more comfortable with the law as it stands. We do not want to tamper with that.

We understand the concern of the Democrats. We support the principle, but we believe it is catered for by the common law as it stands. We are reluctant to support this amendment—let us face facts: this amendment arrived today and we did not discuss it until quite recently—because we would be doing something which potentially may not be fully understood in the circumstances, whereas we understand the common law situation as it is. We are advised that the common law will take precedence over this legislation. We support the situation of the common law right of an individual in that regard. We therefore cannot see the benefit in having this amendment accepted in the circumstances and we will not be supporting it.

I take this opportunity to deal with a couple of matters that the minister commented on in closing. He said that we were claiming credit for getting the unions involved in the process of getting this legislation right, and that that was the sole point of credit we claimed. Frankly, that is wrong, but let us face another fact: there were 44 amendments to this legislation proposed by the government in the House of Representatives. I am advised that every one of those 44 amendments was substantially due to the consultation process engaged in, after the legislation had commenced, with the opposition and with the union movement. Let us face facts: thousands of people employed in the aviation sector are members of the appropriate employee organisations. Those organisations have a right to represent their members, not only in industrial tribunals but also in relation to laws which will affect their working lives.

As a result of that consultation a series of amendments has been proposed by the government to make this legislation better. I do not think that there are grounds for any aspersions to be cast on the Labor Party for welcoming that involvement. The government, indeed, has welcomed it by passing 44 amendments to its own legislation. That should teach the government that you cannot follow your ideological bent, as has been demonstrated by the minister here today, and cast aspersions on the validity of those consultations when the government has welcomed those representations in the form of 44 amendments in the House of Representatives.

I live in a regional city, or near one, unlike the minister, who sought to attack Mr Mark Latham for living in the city of Sydney. Several million people live in Sydney, and probably more than a million people, or thereabouts, live in Perth, where the minister lives. There is nothing wrong with that. But just as the minister is the minister for regional services—

Senator Ian Campbell—I am not.

Senator O'BRIEN—Sorry; the minister for territories—you represent regional services here. One would expect the minister to have an understanding of matters related to the regions and the territories in dealing with policy issues. It is the same for the leader of
the Labor Party. So it was a cheap political point made by the minister in his contribution, which deserves to be hit over the boundary, not just to it.

In relation to the continuing concerns about the security regime, I raised some matters in the committee with Mr Stoeckel, as is my recollection, about what I believe to be some deficiencies in the interconnection between flights from regional airports to capital cities. I do not propose to canvass them here. It is a sensitive matter to talk about these areas. One no doubt could be accused of drawing to the attention of those who might seek to benefit from it deficiencies in a security regime which might exist for the future. But, having said that, it is appropriate for the opposition to look at and develop policies with regard to cost. When the minister talks about making policy on the basis of a cost-benefit analysis, I wonder whether he means the dollar cost or the alternative, and that is the cost in loss of lives and in loss of confidence in aviation of deficiencies in the system.

We have to balance the issue of the cost of a measure against the very important issues such as the security of the system and the perception that the system is secure. I travel around the country regularly on flights to capital cities and to regions. I have had many conversations with passengers and with people who have been welcoming or seeing off passengers on airlines. I cannot remember any passenger saying to me that they would prefer the issue of the cost of the ticket to outweigh the issue of the safety of their flight or the flight of their loved ones. So when we are talking about the cost-benefit analysis of measures we have to see it in the way Australians would like us to see it, and that is that the security and safety of their flights and the flights of their loved ones and friends is more important than whether there are a couple of extra dollars on the ticket. The minister and the government may have a different view, but that is my view. Australians value safety and security over a couple of dollars concession on the price of the ticket because safety has been observed in a less meticulous way. We will not be supporting these amendments for the reasons I have outlined. We hope the bill passes shortly and we will be keen to see further development in this regime.

Senator NETTLE (New South Wales) (11.37 a.m.)—I have a couple of comments on the Aviation Transport Security Bill 2003 and then I have some questions for the minister before I address the Democrat amendments. The Australian Greens are supporting this bill. We are very supportive of any proposal that sensibly improves security of aviation at national, international or regional airports. Overall, we think the creation of a comprehensive security regulatory framework for the aviation industry is something to be commended. We know that there have been concerns particularly from workers in unions in relation to some aspects of this legislation, and we recognise that. Many of those concerns have been addressed by amendments in the House of Representatives.

I have a couple of questions to ask the minister regarding some specific aspects of the bill. Our concerns centre around the significant set of powers outlined in the bill in relation to airport security guards, screening officers and also the powers of the secretary of the department. We have all seen reports in the media recently of racial profiling appearing at other airports around the world. Just last month we had four young Australians of Sri Lankan background held in the United States for profiling, seemingly as a result of racial targeting by airport security. We need to ensure proper security at airports but it is crucial that that security is not at the expense of civil rights.
Part 5, division 3 of the bill gives extensive powers to law enforcement officers, powers to stop and search people and vehicles, with penalties of up to two years imprisonment for those who do not cooperate. Part 5, division 4 gives airport security guards the power to physically restrain people. Part 5, division 5 gives powers to screening officers to frisk a person and to physically restrain a person. It is important in the exercise of these powers that some of the controversial abuses that have occurred elsewhere in relation to these sorts of powers do not occur in Australia. So I ask the minister: what regulatory framework will the minister be putting in place to ensure that these additional powers given to airport security guards et cetera will not be used for ethnic profiling in the way we have seen some similar powers used recently, for example, in the United States against Australian citizens?

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.40 a.m.)—I thank Senator Nettle for the question. It is a very important one. Clearly, you have to strike a balance between security and civil liberties. I think that it is appropriate to say that post September 11 in airports in Australia and around the world a lot of people have had to put up with a lot of delays getting into and out of secure areas in airports. I do not think that any of us begrudge that even though in a way the additional sorts of tests that are taking place at the airports around Australia now do in effect infringe people’s liberties.

I take this opportunity to say that the people at airports doing that work do an extraordinary job. It is tough work. They are generally dealing with travellers who are quite often tired and disgruntled, wanting to get home, usually in a hurry, usually running late. In my own experience and in Senator O’Brien’s experience, we spend an enormous number of days in our lives going in and out of airports, making sure that we have got nothing metallic anywhere near us so that we can get through.

I also say to the travelling public, if it is possible to get this broadcast—and there are probably hundreds of thousands of people listening to the broadcast on ABC today—that these measures are very important. Senator O’Brien has made the point, and Senator Nettle is supporting us, that these are measures to make Australians safer. They are designed to ensure that you do get home safely. When someone asks you to open your bag so they can look inside to see whether you have got your deodorant spray or asks to use the new measures to test for residual explosives and so forth, say thank you to them, because they are there to keep you safe. I have witnessed a lot of people being angry with the officers and being upset. Many people do see it as an infringement of their right to move around freely, and to some extent they would perceive it as a civil liberties imposition. But the officers are doing that to make you safer.

I think the best advice—and this is a case of ‘don’t do as I do, do as I say’—is to try to allow a little bit more time for when you get to an airport these days. It is going to take a little bit longer but the regime is designed to keep you safe.

In terms of the specific question relating to, for example, racial profiling, there is absolutely nothing in this law that will enable that. It is clearly repugnant to Australia to see that occurring. As a department and as a government we will be monitoring the implementation of this new regime. Potentially there will, from time to time, be regulations to support this regime which will come before the parliament. Senator Nettle will of course be able to scrutinise them and ensure that her very legitimate and very important concerns about people’s civil liberties are assessed and tested against her principles.
Senator ALLISON (Victoria) (11.44 a.m.)—I wish to make some concluding comments about our amendments. Minister, when you talk about reversing the onus of proof—or not reversing it, as the case may be—I wonder whether any reasonable excuse is taken as a reasonable excuse, and I wonder what the purpose of reversing the onus of proof is. If someone did leave a bag in the airport and said, ‘I just did not see the sign,’ would that be a reasonable excuse? Is it reasonable for people to know that they should not leave bags around? The purpose of our putting this amendment forward is that it is not at all clear.

The other point I want to make about the second amendment is that I understand it is the case that the High Court decision has shown that people are entitled to legal representation. But, unless it is expressly in the bill, it seems to us that there are dangers that government officials and others who are administering the bill may not be aware of, and certainly laypeople who may be the subject of this legislation will not be likely to know them either. It may well be that they do not even bother to ask, imagining that this is not possible. It is also my advice that inserting this amendment into the bill will not cause problems. I cannot give you chapter and verse an explanation of why that is so, but that is the advice we have received. It is plain that neither the government nor the opposition will support these amendments, but I make those points.

Senator NETTLE (New South Wales) (11.45 a.m.)—I thank the minister for his answer, and I have two more questions that I want to ask. They relate to part 4, divisions 3 and 4 of the bill in relation to regulating weapons and prohibited items. Obviously, we are supportive of requirements to prevent weapons or indeed any items that might interfere with the function of an aircraft being brought into airports. As the senator mentioned, people who are regular fliers are always careful to make sure they do not have metal on them so that they can get through the airport security quickly. But people who are less regular aircraft travellers may accidentally—and I have often seen it myself at the airport—have nail clippers in their hand luggage rather than in their main luggage. As I understand it, if nail clippers are considered to be a prohibited item, this legislation may mean that people who inadvertently have nail clippers in their hand luggage rather than in their main luggage will face an automatic $2,200 fine, because there is a strict liability clause in relation to the penalty. I want to check whether that is the minister’s understanding of the way in which the legislation is currently written.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.47 a.m.)—Personally, I think there should be a law against clipping your nails on a plane! My media adviser will be very amused by your raising this point, because he has a set of nail clippers which he cannot find in his baggage and he has to pull it apart every time he goes through an airport. The serious answer is that we will be reviewing that list. I am informed that nail clippers would not be classified as a weapon at this stage.

Senator O’Brien—Unless it has a file on it.

Senator IAN CAMPBELL—Yes. But the serious answer is that we are going to review that. It will be the subject of a regulation, so you will get the chance to review it as well.

Senator NETTLE (New South Wales) (11.48 a.m.)—Thank you. I wish to now comment on the amendments that we are discussing at the moment. Division 7, section 67 allows the secretary of the department to give special security directions requiring
additional security measures to be taken. Failure to comply with these additional directions becomes a strict liability offence under proposed section 73. This is a significant power being provided to the secretary—effectively to make law—and it is a power that has no parliamentary oversight as a component of it. So the Greens will be supporting the first amendment put forward, which seeks to ensure that the onus of proof is not reversed.

In relation to the second amendment being put forward, the Greens’ advice is that the common law currently allows confidentiality between a person and their lawyer to be respected and that inserting such a clause into the bill could mean that there is an implication that confidentiality will not be protected in other parts of the bill where there are strict liability clauses. So, although we will be supporting the first amendment, we will not be supporting the second amendment. I do not know whether you want to split them, because I know you sought leave to move them together, but that is the position of the Australian Greens.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.50 a.m.)—I am advised that this is an existing power and was the one that enabled us to take action the morning after September 11—at nine o’clock on 12 September. What we are doing in this act is constraining that power somewhat—for example, putting a sunset provision on it as a result, I think, of the Auditor-General’s recommendations in relation to sunsetting it after three months and being able to withdraw it almost immediately or as soon as it becomes unnecessary.

While I am on my feet, I will respond to Senator Allison’s subsequent questions about her own amendments. The court would in fact determine what was reasonable. The court would have to take into account the circumstances in which the conduct occurred; they would make those decisions. Clearly, in the case that Senator Allison refers to, it would be something that was innocent and that was justified in the circumstances. We are not going to prejudge those things; they are things we will leave it to the court to decide in the circumstances at the time. Secondly, on professional privilege, I think I made our case—that is, the High Court has determined that those privileges, those common law rights and immunities, cannot be taken away. Although an innocent contravener may not be aware of the legal doctrine—I would not expect everyone to have read Daniels v. ACCC—in fact this is an issue about the privilege that exists between a citizen and their lawyer, and most of us would expect the lawyer to have read Daniels v. ACCC.

Question negatived.

Bill agreed to.


Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (11.53 a.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.
CRIMINAL CODE AMENDMENT
(TERRORIST ORGANISATIONS) BILL
2003
Second Reading

Debate resumed from 16 June 2003, on motion by Senator Coonan:
That this bill be now read a second time.

(Quorum formed)

The DEPUTY PRESIDENT—The second reading debate on this bill, including the minister’s speech in reply, was concluded on 16 June 2003. I will therefore put the question that this bill be now read a second time.

The Senate divided. [12.01 p.m.]

(Ay es…………… 45
Noes…………… 10
Majority……… 35

AY ES
Barnett, G. Bishop, T.M.
Campbell, G. Campbell, I.G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Collins, J.M.A.
Cook, P.F.S. Coonan, H.L.
Denman, K.J. Eggleston, A.
Ellison, C.M. Evans, C.V.
Faulkner, J.P. Ferguson, A.B.
Forshaw, M.G. Harradine, B.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Johnston, D.
Kirk, L. Knowles, S.C.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Macdonald, J.A.L.
Mackay, S.M. Marshall, G.
McGauran, J.J.J. * McLucas, J.E.
Minchin, N.H. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Santoro, S.
Scullion, N.G. Sherry, N.J.
Tchen, T. Tierney, J.W.
Watson, J.O.W. Webber, R.
Wong, P. NOES
Allison, L.F. * Bartlett, A.J.J.

* denotes teller

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (12.05 p.m.)—The Greens absolutely oppose this legislation and we are consistent in doing so. We opposed it when it came before this chamber in 2002 and then again in June 2003. We do so because we do not believe that a single minister—the Attorney-General or anybody else—acting for reasons which are not public, in secret, should usurp the power of this parliament as it has been over the last 100-plus years to be able to list an organisation as directly or indirectly involved in matters which would make it a terrorist organisation and therefore ban it with the result of the jailing of members, the seizing of assets and the closing down of that organisation. It is the only power of this parliament to be so usurped. We have argued strongly before that parliament must have that power and indeed it has been expeditious in using that power in recent times, for example, in proscribing Hezbollah, the military wing of Hamas, and a Pakistani organisation, which was of direct concern because of its activity in criminal terrorist events overseas.

This bill allows the Attorney-General, without first seeking the authority of parliament and without safeguards that are of any consequence whatsoever, to assume a power that has not been there since the Australian parliament was established in 1901. Let me quote from the then Leader of the Opposition, Simon Crean—

Senator Faulkner—Mr Simon Crean.
Senator BROWN—the Hon. Simon Crean, indeed, Senator Faulkner—when this matter was debated in the House of Representatives last June. He said that the ALP does not support executive proscription, meaning that the ALP will not support any bill which gives:

... sweeping powers to the Attorney-General alone to ban any organisation he deems to be terrorist.

He went on to say:

Terrorism is a threat to our freedoms but we will not defeat terrorism by giving away our freedoms. And further:

Banning organisations—whether you do it through the United Nations or through a specific legislative amendment—does nothing to alter the fact that under our existing antiterror laws terrorism is a crime. The penalties for terrorists and terrorist organisations in Australia are severe and they are immediate—they should be. It underpins what Labor have said that we want ... to be tough on terrorists but only terrorists.

The then Leader of the Opposition went on to point out that the proposed powers of the Attorney-General threaten civil liberties in Australia—that is, under this legislation. Let me quote this because it gets to the heart of the matter. The then Leader of the Opposition said:

... we will not agree to their carte blanche approach in giving the Attorney-General the sweeping powers that John Howard always wanted but would only ever act on if it suited his political purposes, not for the protection and the security of the Australian people.

There Labor stated in a nutshell the very big concern about this legislation. It can be used, if it becomes an act, for political purposes—not for safeguarding the Australian people, but to proscribe organisations which have a legitimate role in the fabric of our democratic society and our nation. We do not truncate the tough row of protecting ourselves from terrorism by, indeed, giving away our freedoms, as Labor has said before.

A case in point was the move by the Menzies government to proscribe the Communist Party in 1951. The High Court denied that legislation because it was not empowered to do that under the Constitution. It went to a referendum and the Australian people extraordinarily enough—I am old enough to remember this—said no to the government proscribing the Communist Party. If you remember those times, the whole subtext was that this entity was about bringing about the downfall, by violent means or otherwise, of our country and our democratic systems. But the Australian people had the wisdom to recognise that it was essential that a functioning political party like that have its rights safeguarded and they said no in a referendum.

Here is the Labor Party, together with the government, saying, ‘We’ll give that power to the Attorney-General. We’ll give the power to the Attorney-General to proscribe Nelson Mandela’s ANC.’ Senators will remember that in 1985 the ANC, for example, said to black South Africans, ‘Let’s make the townships ungovernable as part of our insistence that we do not cave in to the sort of governance coming down from the apartheid government of South Africa.’ Under this legislation that would immediately, if the Attorney-General so wished, put out of action not only any component of the ANC which happened to be active in Australia in advocating the anti-apartheid cause but also any organisation which was indirectly involved, such as humanitarian organisations supporting black South Africans at the time.

You will know that under this legislation the Criminal Code, as already established, means that that involves a threat to public health, not just in Australia but in any other country you would like to name. Effectively this legislation will allow the Attorney-General in the future to proscribe organisations fighting for democracy and freedom in other countries through their efforts to desta-
bibilise an existing dictatorship, whatever that might be—violent and nasty dictatorships included, like the one that supported the Su-harto regime and that we saw Fretelin fighting against just a few short years ago. Frete-lin could be banned instantly under this legis-lation, as could organisations determined to fight peacefully for self-determination, for example in Tibet, Burma or elsewhere around the world.

Simon Crean was right last year when he said the danger here is that the Howard gov-ernment or, if we want to not be direct about it, some future government with a greater inclination to autocracy could proscribe organisa-tions for the political benefit it thinks it will get from it. One of the political bene-fits we have seen exercised recently by the Howard government is the fostering of fear—even based on totally false informa-tion—to gain an electoral advantage. We have seen that with Australian Defence Force personnel being sent to the war in Iraq against the interests of this country and cer-tainly against the interests of those Defence Force personnel, given the deceit that there were immediately threatening weapons of mass destruction which could cause mam-moth death and destruction—those are the words of the Prime Minister—in the hands of Saddam Hussein. We now know that was wrong.

If that sort of information can be con-cocted and sent to the public to enable Aus-tralia to be involved in a war on the basis of fear, imagine what a democratically elected government can do under this legislation to justify the banning in this country of organi-sations which could be entirely innocent. Labor was right last year. Labor is wrong this year. Wasn’t it instructive to see the At-torney-General, Mr Ruddock, cooing on televi-sion last night about Labor caving in to the government in the run-up to an election? Yesterday, Mr Howard said that he ‘would have thought that the Labor Party was being forced into a backflip’. Then we had the At- torney-General driving the blade in last night, saying that not only can we expect Labor to cave in in the run-up to an election on matters on which they should be standing on principle but also that there is more to come. This is the problem, I say to the Labor Party: there is more to come. The Attorney-General says so. You know so. How far are you going to go in supporting this govern-ment in cutting across the safeguards this parliament stands for in our democratic sys-tem and in giving the power to the Attorney- General to be able to proscribe an organisa-tion?

What is next? I reiterate—and the Hon. Simon Crean was absolutely right about this—that there are enormously strong pow-ers against terrorists or those who would concoct a process towards terrorism in this country, including for the seizure of funds and the jailing of people who are involved. This legislation is not necessary to defend this country against terrorists or would-be terrorists, but it is dangerous legislation. The Labor Party might be able to explain why it has removed itself from being the watchdog of the democratic and national interest in this matter. The Greens do not have to do that. We are consistent about this. I fear what is coming next.

We will vote and debate against this legis-lation with all the force we have. It is going to go through on the numbers, but this cave-in by the Labor Party to the ambitions of this government for greater autocracy and a greater ability to politically prohibit legiti-mate organisations and people through a mechanism such as this is dangerous. What is wrong with the parliament vetting the pro-scription of organisations? Since when did the parliament object to that process? We saw parliament recalled just before Christ-mas to proscribe two organisations, and the
Greens supported that. Mind you, it should have been done during the ordinary sitting period of the parliament. It was an unnecessary cost for the taxpayers. But, as far as the proscription was concerned, that worked. We might ask: what is wrong with the process whereby the United Nations listing leads to the listing of terrorist organisations in Australia? If you want to go beyond the United Nations—

Senator Faulkner—You opposed that. That was an opposition amendment but you opposed it.

Senator Brown—Senator Faulkner intervenes on the basis that the Greens in some way have said that parliament is not the safeguard. We always say that, Senator Faulkner. It is you who have gone weak at the knees and are backing off on this right now, today.

Senator Faulkner—You are not speaking consistently. I am just pointing out that you are being inconsistent.

Senator Brown—I am going to be very interested to hear, Senator Faulkner, how you argue against the very argument that you put—which is my argument now—just a few months ago. What is worse is what is coming down the line: the further pieces of legislation we will see in the run-up to the election this year. I am going to have more to say about this.

Senator Faulkner—Oh, good.

Senator Brown—At least Senator Faulkner appreciates the points I have been making, because they echo exactly what he was saying in this chamber just nine months ago.

Senator Faulkner—I just know that I can go and have a cup of coffee while you are on your feet. It gives me a chance to get out and have a cup of coffee.

Senator Brown—I have no doubt, Senator Faulkner, that you would prefer to be out having a cup of coffee. But here we are. I am going to be very interested to hear what the Labor Party have to say on this. Of course, we are going to hear the defence from the government that there are safeguards in here. There are not. Mr McClelland, the Labor spokesperson, yesterday referred to robust safeguards. What nonsense! But we will look at how specious that description is and how the safeguards in fact do not exist. (Time expired)

Senator Ellison (Western Australia—Minister for Justice and Customs) (12.20 p.m.)—At the outset I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 3 March 2004. I seek leave to move government amendments (1), (2) and (3) together.

Leave granted.

Senator Ellison—If I can clarify, it is government amendments (1) and (2) dealing
with three amendments, and I am seeking leave for (1) and (2) to be moved together.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—It was a little confusing, Minister. Is leave granted to move (1) and (2) together?

Senator Faulkner—For amendments (1) and (2), yes. That means he can confirm that there is no amendment (3)?

Senator ELLISON—That is right and I have just said that.

Leave granted.

Senator ELLISON—I move government amendments (1) and (2):

(1) Schedule 1, item 1, page 3 (after line 13), after subsection (2), insert:

(2A) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in this section, the Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation.

(2) Schedule 1, page 4 (after line 3), at the end of the Schedule, add:

3 The Schedule (at the end of section 102.1 of the Criminal Code)

Add:

(17) If:

(a) an organisation (the listed organisation) is specified in regulations made for the purposes of paragraph (b), (c), (d) or (e) of the definition of terrorist organisation in this section; and

(b) an individual or an organisation (which may be the listed organisation) makes an application (the de-listing application) to the Minister for a declaration under subsection (4), (9), (10A) or (10C), as the case requires, in relation to the listed organisation; and

(c) the de-listing application is made on the grounds that there is no basis for the Minister to be satisfied that the listed organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur);

the Minister must consider the de-listing application.

(18) Subsection (17) does not limit the matters that may be considered by the Minister for the purposes of subsections (4), (9), (10A) and (10C).

4 The Schedule (after section 102.1 of the Criminal Code)

Insert:

102.1A Reviews by Parliamentary Joint Committee on ASIO, ASIS and DSD

Review of listing regulation

(1) If a regulation made after the commencement of this section specifies an organisation for the purposes of paragraph (b) of the definition of terrorist organisation in section 102.1, the Parliamentary Joint Committee on ASIO, ASIS and DSD may:

(a) review the regulation as soon as possible after the making of the regulation; and

(b) report the Committee’s comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

Review of listing provisions

(2) The Parliamentary Joint Committee on ASIO, ASIS and DSD has the following functions:

(a) to review, as soon as possible after the third anniversary of the commencement of this section, the operation, effectiveness and implications of subsections 102.1(2), (2A), (4), (5), (6), (17) and (18) as in force...
after the commencement of this section;
(b) to report the Committee’s comments and recommendations to each House of the Parliament and to the Minister.

Review of listing regulation—extension of applicable disallowance period

(3) If the Committee’s report on a review of a regulation is tabled in a House of the Parliament:
(a) during the applicable disallowance period for that House; and
(b) on or after the eighth sitting day of the applicable disallowance period;
then whichever of the following provisions is applicable:
(c) subsections 48(4), (5) and (5A) and section 48B of the Acts Interpretation Act 1901;
(d) Part 5 of the Legislative Instruments Act 2003;
have or has effect, in relation to that regulation and that House, as if each period of 15 sitting days referred to in those provisions were extended in accordance with the table:

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Applicable disallowance period

(4) For the purposes of the application of this section to a regulation, the applicable disallowance period for a House of the Parliament means the period of 15 sitting days of that House after the regulation, or a copy of the regulation, was laid before that House in accordance with whichever of the following provisions was applicable:
(a) paragraph 48(1)(c) of the Acts Interpretation Act 1901;
(b) section 38 of the Legislative Instruments Act 2003.

The bill as originally put related to a listing process for terrorist organisations and related to the specific listing of the LET organisation—Lashkar-e-Taiba—and also the Hezbollah External Security Organisation, which is the military wing of Hamas. In June last year the bill was separated and the Senate dealt with a listing of those two organisa-
tions, but it still left outstanding the question of the listing process and that is what we are dealing with here today. This is an important aspect in relation to the protection of Australia’s security.

What we are dealing with in relation to the amendments that I have mentioned is, in relation to government amendment (1), an ability or requirement for the Leader of the Opposition to be briefed on any proposed listing of any organisation. Government amendment (2) deals with three aspects. A review of the legislation after its commencement and the provision for a review of each listing regulation by the Parliamentary Joint Committee on ASIO, ASIS and DSD. The committee will be required to report to parliament within the disallowance period and the disallowance period will be extended for up to eight sitting days after the report is tabled. The amendment also makes it clear on the face of the legislation that a person or organisation may apply to the Attorney-General to delist an organisation if he or she is no longer satisfied that it is a terrorist organisation.

The government has always maintained that this bill is a very important one and one which should be passed without delay. The purpose of the bill was to amend part 5.3 of the Criminal Code to remove the requirement for there to be a relevant United Nations Security Council decision in place before an organisation could be listed as a terrorist organisation for the purpose of our domestic law. The government argued at the time that this potentially created problems where Australia might identify threats by terrorist organisations that do not interest members of the UN Security Council. Of course, we have seen in our own region threats which have arisen which relate more particularly to Australia than perhaps other parts of the world and we have also seen, on the other side of the coin, other threats which relate to other countries and not so much to Australia. Therefore, it is important that we have this ability to list a terrorist organisation without that requirement which relates to the United Nations.

It has been claimed that we are attempting to bring in new, sweeping powers for the Attorney-General. The Attorney-General had a power to list terrorist organisation’s that met strict legislative criteria. We do have safeguards in our legislation, we do have safeguards which are proposed in relation to this process and we have always had the aspect of disallowance by the Senate and judicial review.

In relation to the three aspects which the government is proposing today contained in those two amendments, the provision which requires briefing of the Leader of the Opposition is one which has come about as a result of negotiations with the opposition. We would point to a very good record of briefing the opposition. Certainly, in the ASIO legislation, there is a requirement to brief the Leader of the Opposition, but the government stands on its record that it has briefed the opposition on matters where it has not had to do that and, in this instance of listing an organisation, we would have done that in any event. But the opposition has sought to have this provision contained in the legislation and the government has agreed to it.

In addition, there is the question of the purview of the Parliamentary Joint Committee on ASIO, ASIS and DSD, and the government believes that that is appropriate. There is also the other aspect that deals with the delisting of an organisation, stating that any person or organisation can make an application to delist. Can I say for the record that the government is of a view that that was covered previously in the proposed legislation. The opposition has sought to have this put by way of amendment so that it is in the
Again, the government has no problem with this, but we believe that really this is a matter that was adequately covered before.

Strict safeguards will remain and the making of regulations is subject to review. To resist a challenge to the validity of a regulation, the government would have to prove in court that the government had evidence that provided a proper basis for the making of the regulation. Furthermore, a regulation will take effect upon gazettal but may still be disallowed through the ordinary disallowance process which I have mentioned. This will allow ample time for parliamentary scrutiny. Of course, disallowance needs only a majority in one house, so the regulation is clearly subject to parliamentary rather than the government control. Finally, regulations made under the provisions will sunset two years after they are made, unless regulations are remade. That is another aspect which I would point out by way of safeguard. This is a very important bill for the protection of Australia’s national security and it is one which needs to be passed without delay.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.29 p.m.)—The opposition has consistently argued for strong safeguards to accompany the Attorney-General’s power to proscribe terrorist organisations. Unlike the government, who originally wanted a completely arbitrary power to ban organisations, Labor has consistently argued against secrecy and for proper accountability as to any such decision by the Attorney-General. The Senate will recall that the government first proposed to give the Attorney-General the power to proscribe terrorist organisations in the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]. In that bill it was proposed that the Attorney-General could, by notice published in the Gazette, outlaw an organisation on the basis that it was either involved in terrorism offences or was ‘likely to endanger the security or integrity of the Commonwealth or another country’. I think what the Minister for Justice and Customs said in his previous contribution about disallowance is not accurate: there was not a provision enabling disallowance of such a notice in that original legislation, certainly as I remember it. In its original form, the government’s legislation empowered a single member of the executive government to make proscription decisions that were both secret and unaccountable. Not surprisingly, that proposal was strongly opposed by the opposition and also caused a revolt, as senators may recall, in the coalition party room. It was unanimously rejected by the Senate Legal and Constitutional Legislation Committee, on which the government not only held a majority but also had the chair. In doing so, the committee’s unanimous report stated:

Based on the submissions made to and the evidence received by the Committee, the Committee believes that the proposed provisions are not acceptable to a large proportion of the Australian community and contain significant omissions.

The proposal was rightly seen by the committee chair as a direct threat to the rule of law and the democratic freedoms and values that Australians cherish. Parliament was absolutely right to insist that the government review it and, based on the good work of the Senate committee, constructive discussions took place and in June 2002 this parliament passed legislation giving the Attorney-General the power to proscribe organisations only if they had already been listed as terrorist organisations by the United Nations Security Council. This was consistent with Australia’s international obligations under resolutions of the United Nations Security Council, which itself has adopted a form of international proscription to attack the flow of funds to terrorist organisations linked to al-Qaeda.
Three months after that, the Attorney-General first exercised the power, to proscribe a number of organisations including al-Qaeda. Any fair-minded person would wonder why, if the government genuinely believed that these issues were urgent, the then Attorney-General took three months to list the No. 1 terrorist organisation in the world, the terrorist organisation that presented the greatest threat to the international community: al-Qaeda. Given that al-Qaeda had been proscribed by the UN Security Council almost a year earlier—given that had occurred—you have to ask yourself what was going on in the office of the then Attorney-General, Mr Daryl Williams. The Prime Minister acknowledged, in his address to the National Press Club on 11 September 2002, that the final package of legislation passed by the parliament was balanced. The Prime Minister said then:

We have, of necessity, tightened our security laws. I believe through the great parliamentary processes that this country has I believe that we have got the balance right.

That is what the Prime Minister said; nevertheless on 29 May 2003 the government reintroduced its proscription legislation. Unfortunately, the problems of secrecy and lack of accountability surrounding proscription decisions remained. From the outset Labor made it clear to the government that we were again prepared to work constructively to address these issues. In the meantime the opposition had facilitated swift passage of separate legislation specifically listing the terrorist wings of the Hezbollah, Hamas and Lashkar-e-Taiba organisations in Australia. Interestingly enough to the Senate, the legislation banning Lashkar-e-Taiba was warmly welcomed by senators, particularly Senator Brown. In fact, Senator Brown berated the government for not banning Lashkar-e-Taiba more quickly. On 7 November 2003, in relation to this issue of parliamentary proscription of Lashkar-e-Taiba—I do not often quote you, Senator Brown, but I am going to today—Senator Brown said:

The Greens will have no opposition to these or other terrorist organisations being proscribed, and in particular any assistance that can be given to terrorism from this country in the form of money or other matters being tracked down and prohibited, because we have no truck with terrorism.

Later he went on to say:

Why has the government been so dilatory that it is has been unable to bring before the Senate in any of the last 24 months the legislation we have today to proscribe these organisations?

Clearly, Senator Brown’s previous objections to proscription were ameliorated once there was a meaningful role for the parliament in the process—a check against arbitrary executive power. That is fair enough. I agree with him. On that matter we are certainly in agreement. In June last year, within days of this bill’s introduction, the opposition approached the Attorney-General with a proposal for a court based mechanism for listing organisations not listed by the Security Council, backed up by better parliamentary scrutiny. Labor’s proposals were modelled on the existing part IIA of the Commonwealth Crimes Act 1914 and would have enabled the Federal Court, on the application of the Attorney-General, to declare any organisation to be a terrorist organisation.

Labor put that proposal forward in good faith. Yet for five months we faced a situation where not only did we not get a positive answer from the government in relation to that proposal for judicial proscription but also we did not get any answer from the government at all. I think that that was absolutely appalling behaviour on the part of the government, which claimed that this legislation was urgently needed to protect Australians. It took repeated prompting before the Attorney-General, in November last year, wrote to the opposition indicating that the
government would not accept our proposal. There was nothing in that response from the government that suggested that it was looking for a way through the impasse or had any proposals to address concerns that its proscription regime remained flawed by unacceptable secrecy and a lack of accountability. Once again the Labor opposition renewed our approach to the government with a range of constructive suggestions to address those problems. We welcome the fact that finally, after several months of discussions between the opposition and the Attorney-General, the government has moved on the proscription issue and has agreed to incorporate additional safeguards into the legislation.

These safeguards are necessary to ensure public confidence in these laws. We cannot risk a situation where public confidence in the laws governing Australia’s national security is shaken because there are inadequate safeguards against error or misuse. As we have seen, the debate about weapons of mass destruction has shaken public confidence in the government’s justification for war in Iraq. The same weaknesses cannot be repeated or tolerated in a proscription regime. A primary objective of proscription is the public expression of revulsion towards the activities of terrorists. Considerable controversy has historically accompanied the proscription debate in Australia. Only a process with fair and objective scrutiny of security material will remove doubt in the public mind about any individual act of proscription. The opposition maintains that the government was wrong to reject a proscription regime with judicial safeguards. Such a regime would enjoy far greater public confidence than one which confers such a power on a member of executive government—particularly this executive government, which nobody trusts.

But Labor recognise that these matters should not become the subject of divisive party political disputes. We have done everything we can—everything in our power—to ensure that appropriate additional safeguards are incorporated into the government’s model. The amendments before the Senate today were requested by the opposition. They have now been accepted by the government. They provide for a significant check against error or misuse of the proscription power. They ensure that proscription decisions are not taken in secret, are not taken behind closed doors and are not taken without accountability. The opposition remain committed to establishing a court based regime of listing terrorist organisations, but we believe that as a result of the government’s movement on this legislation the parliament will retain real and effective control over the executive on proscription decisions.

That is a principle that this chamber and this parliament accepted when dealing with legislation to proscribe the terrorist wings of Hezbollah and Hamas and the terrorist organisation Lashkar-e-Taiba. It is a principle that the parliament accepted at that time. It is important for us to remember that that principle was accepted in the Senate unanimously. Not one voice in this chamber was raised against it. In this legislation, thanks to the efforts of the Australian Labor Party—thanks to the efforts of the opposition in this country—we now have a situation where parliament can also exercise its judgment on any decision any member of the executive makes in relation to the proscription of an organisation. Again, it is a great victory for the opposition to be able to move this government that does not have the standards most reasonable people would want in relation to these matters. It is a great achievement, and it is for these reasons that the opposition will be supporting this legislation.

Progress reported.
**MATTERS OF PUBLIC INTEREST**

**The DEPUTY PRESIDENT**—Order! It being 12.45 p.m., I call on matters of public interest.

**Superannuation: Judges**

**Senator BRANDIS (Queensland)** (12.44 p.m.)—On 8 February, the *Sunday Age* reported the Leader of the Opposition, Mr Latham, as saying that a Labor government would ‘scale back’ superannuation arrangements for federal judges. Mr Latham was quoted as saying:

“I don’t see why judges should have a superannuation arrangement that’s seven times the community standard.” ... “Are judges part of the problem with a double standard? Yes.”

He went on to describe the existing superannuation arrangements for federal judges as ‘indefensible’ and made a direct comparison between the superannuation of judges and that of federal politicians.

In speaking as he did, Mr Latham showed a lamentable ignorance of the special constitutional position of judges. Unlike politicians, judges are appointed for the rest of their working lives. Unlike politicians—who can be removed by the electorate every three or, in the case of senators, six years—judges cannot be removed, other than by an exceptional constitutional procedure requiring a resolution of both houses of the parliament after a finding of ‘proved misbehaviour or incapacity’. So while politicians are, and should be, constantly exposed to the swirling tides of public opinion and always at risk of having their public careers terminated by the will of the electorate, judges are specifically made immune from such considerations.

That difference reflects the fundamental constitutional principle of the independence of the judiciary—unless judges are absolutely free to carry out their work fearlessly and independently of any external influence or pressure, public confidence in their impartiality in the resolution of disputes may be jeopardised.

One of the key guarantees of judicial independence is the structure of judges’ remuneration and post-retirement benefits. Judges must be free to administer the law confident in the knowledge that, once they assume judicial office, they will never have to go back into the marketplace. Their vocation is a lifetime one. So judges are made secure in their incomes, both during their tenure and after they have retired. But some will say that judges are already well paid: they earn more than $200,000 a year and the Chief Justice of the High Court is paid more than $300,000 a year. That is true. But what it disregards is the fact that, if Australia wants to recruit its judges from the very best, the most eminent of its lawyers, then—with certain exceptions, such as those recruited from academia or those already working for government—the judges will usually be recruited from among the leaders of the bar. And so it should be. Their craft is advocacy in the courts, so the traditional source of the bench is, quite naturally, the bar.

The leaders of the bar are, like the leaders of any highly specialised profession—surgeons, architects, engineers, accountants—people who, by reason of the esteem in which they are held and the intense competition for their services, command huge incomes, almost invariably many times the income which judges receive. They command those incomes because they have achieved excellence in an arduous and extremely demanding profession, and they are entitled to the fruits of their success. Yet very seldom when senior barristers are approached for appointment to the bench do they decline. They accept those appointments freely and almost always out of a real sense of public service and public duty, well knowing that by doing so their material circumstances will be very considerably reduced—
and not just their material circumstances. I know many barristers who have become judges, and I hardly know one who has found life on the bench to be as enjoyable as life at the bar—honourable, certainly, but nevertheless a career change which demands more sacrifice than merely the sacrifice of material rewards.

Even the man most commonly regarded as Australia’s greatest judge, Sir Owen Dixon, when he retired from the office of Chief Justice of the High Court on 13 April 1964 was moved to say in his farewell address:

The work at the Bar I did for some years and enjoyed it. It is work which at all events to the young—and I was young—is extremely enjoyable. You think you are really doing some good in the world when you win a case, even when you are told you ought not to have won.

I am not sure what you think on the Bench. I have been thinking of it for thirty-five years and reached no conclusion at all except that it is hard, unrewarding work.

No man or woman of any quality goes to the bench for material reward, and it is mean-spirited to suggest that people who make those kinds of sacrifices are unworthy of the financial security which society provides them.

But there is yet a broader issue at stake than merely the position or the entitlements of judges; for what I detect in Mr Latham’s attack on the judiciary is a kind of crass populism which diminishes, cheapens and devalues the quality of our public life by—if only through innuendo—belittling and disparaging those who hold high and responsible offices in this land.

I have spoken today about judges, but my observation has a broader application than that. Those who give their careers to the vocation of service to the Australian people—whether they be judges, whether they be members of the armed forces, whether they be our public servants or our diplomats—are increasingly having to give that service at a time when the very notion of public service is being treated with scorn and disrespect by those who practice the kind of lowest common denominator politics which has become the stock in trade of the Leader of the Opposition and, I am sorry to say, of more politicians than just him.

Professor Galbraith, the celebrated and venerable American economist, long ago popularised the phrase ‘private affluence and public squalor’. Although he was speaking in a different context, I greatly fear that politicians such as Mr Latham, and those who would seek to imitate him, may have the same effect upon our public institutions and our public life. It is for us to put a stop to it. If this country gets into a competitive bidding war to see who can be the truest champion of mediocrity in our public institutions, an envy driven race to see who can cheapen our public life the most, then there will be only one victim in the end: the Australian people themselves.

I am delighted to say that both the Attorney-General, Mr Ruddock, and the Treasurer, Mr Costello—himself a former distinguished barrister who would be very aware of the sacrifices which judges make and who, I might say, also made great material sacrifices to pursue a career in public life—have guaranteed that the current debate about parliamentary superannuation will not be allowed to spill over into the area of judges’ entitlements. I welcome the fact that they have not succumbed to Mr Latham’s ignorant populism. I look forward to the time when this country returns to a bipartisan appreciation of and respect for the role of public life and pride in the fact that, in recruiting men and women of integrity and excellence to pursue such vocations—so often, as in the case of our judges, at great personal sacrifice—our nation’s public culture is once again marked
by an ethic which appreciates and celebrates the nobility of public service.

Howard Government: Standards

Senator WONG (South Australia) (12.54 p.m.)—Following on from Senator Brandis, I am interested in his assertion that Minister Ruddock is one of the few people—as I understood Senator Brandis’s argument—in the parliament to protect and defend our judicial officers. The issue I am going to speak on today deals in part with the actions and words used by Minister Ruddock in attacking judges of both the Federal Court and the Family Court during his period as Minister for Immigration and Multicultural and Indigenous Affairs, but I will come to that later.

I rise today to speak primarily in response to a rather appalling contribution made in the other place by the member for Sturt which was reported in yesterday’s Advertiser. The article is headed ‘Goebbels jibe at Labor’. It reads, in part, as follows:

LABOR has been accused of running a smear campaign on private school funding that would “make Joseph Goebbels proud”.

Member for Sturt, Christopher Pyne, yesterday compared the ALP’s campaign to that run by the former propaganda minister in Nazi Germany. I am sure many others would share my outrage at this sort of intemperate and offensive language. To liken legitimate political debate over an important policy issue such as schools funding to Nazi propaganda is both inaccurate and highly disturbing. It seems to me it is disturbing at a number of levels. First, and perhaps most importantly, it trivialises the horror that is fascism. It trivialises the sort of propaganda machine that was an integral part of Nazi Germany. Second, it is disturbing because it brings a new low to public debate. It cheapens public debate to the level of simply throwing offensive language at one another.

I would argue that this is not an isolated incident. I say this is part of a pattern engaged in by members of the Howard government, a pattern of smearing and attacking, at times vitriolically, those who express a dissenting voice. We heard in this chamber last year, and there was some considerable media coverage of it, Senator Brandis likening the political modus operandi of the Greens—I think he referred to the international green movement—to those engaged in by fascists. Again it was an offensive reference to many people. Whilst I have my political disagreements with the Greens—certainly at times in policy debate I wish the world were as simple as the Greens appear to make it out to be—fascists they are not.

We have seen this pattern of attack by the Howard government in quite a number of policy areas in this term. I would argue that the approach taken by this government is more that of an authoritarian government than that of a true Liberal government. It is an approach that seeks to deter dissent by attacking dissenters by other means. An obvious example of this was the attacks by the then Minister Alston, a former senator, on the ABC. People would recall Alston’s dossier of complaints against the ABC, the overwhelming majority of which were found to be unfounded and not to indicate any bias. Minister Alston was quoted in the newspapers as stating:

If the Parliament thinks they—meaning the ABC—have lost the plot they could be defunded.

He alleged bias in reporting on the war on Iraq. As I said, the overwhelming majority of his complaints was dismissed as not demonstrating any bias. Essentially this comment by Minister Alston was a threat to the funding of our national broadcaster. I gave a contribution to the Senate at that time which described it as political thuggery at its worst.
A similar approach was also taken by Minister McGauran. When the South Australian government indicated it would legally challenge the federal government’s attempt to impose a nuclear dump on South Australia, Minister McGauran threatened to cut South Australia’s science budget to pay for the legal bill.

**Senator McGauran**—Fair enough.

**Senator WONG**—My colleague says—

**Senator McGauran**—Loyal brother.

**Senator WONG**—My colleague—his loyal brother—says, ‘That’s fair enough.’ No, I do not think it is fair enough. For ministers to throw their weight around and threaten to cut public funding to a state government that is pursuing the legitimate interests of the people of the state is not fair enough. It is not appropriate for ministers to do that and it is nothing more than political threats and political thuggery and is part of the pattern of a government that seeks to crush dissent, stifle dissent and attack dissenters wherever it can. We have also seen this approach in the attack on charities which both ministers and backbenchers of the Howard government have been engaged in. Senator Mason was reported in Tuesday’s *Herald Sun* as criticising some charities for becoming political fronts. He is quoted in the paper as stating:

In the past, charities provided welfare to the needy and worked hands-on to protect the environment—now, they just lobby government instead ...

He said in his speech, according to this article:

Charities and environment groups had become political fronts and should be stripped of their tax-deductible status ...

This is another attempt by a member of the Howard government to attack any group or organisation which expresses a dissenting view. What I say Senator Mason really means is not that these people have become political fronts per se but that they have become political fronts against the Howard government. Actually, Senator Mason was only parroting the views of his political leader, the Treasurer. The Treasurer’s views on charities are well known, and his view appears to be that charities ought not engage in political lobbying. I refer to an article of July last year in the *Financial Review* which discussed the proposed charities bill. It stated that Mr Costello:

... challenged the right of church leaders to speak out on “moral” issues such as the war in Iraq and tax reform at a time when religious ministers faced an unprecedented crisis of confidence ...

The article in the *Financial Review* also stated that the legislation would have dramatic ramifications for public debate in Australia. You will recall that the press at the time demonstrated that charities and church groups were most concerned at the possibility that their criticism of government policy could make them lose their tax-free status under the draft legislation.

Then we come to Minister Ruddock, who as the then immigration minister made a number of criticisms as long as your arm of judges of both the Family Court and the Federal Court for their decisions in asylum seeker cases. One example—and one could quote many—was reported in the *Sydney Morning Herald* on 27 July 2003 in an article headed ‘Ruddock attacks Family Court’. The article reported:

Mr Ruddock publicly criticised an order by the full bench of the Family Court on Monday to release five siblings from the Baxter detention centre in South Australia and said he would appeal against the decision.

It is rather ironic that we had prior to my contribution today a contribution from Senator Brandis in which he accused the Leader of the Opposition of demeaning judges when the now Attorney-General in his former life
as minister for immigration made it part of his job to regularly criticise decisions of the Federal Court and the Family Court when it came to asylum seekers because they did not suit part of the Howard government’s political agenda. If we want to talk about which side of politics has actually threatened the independence of the judiciary through their intemperate remarks, I say that it is to that side of the chamber that we ought to be looking.

I will return to the contribution of the member for Sturt. What did the member for Sturt actually say? He was quite clear in what he said: he likened the Labor Party’s campaign to a campaign that would make the former Nazi propaganda minister, Joseph Goebbels, proud. He also said that it would make Joseph Stalin—yet another authoritarian figure—proud. He was critical of the member for Jagajaga for her comments about public school funding and stated that the facts were alien to the Labor Party in this debate. What are the facts? What did the member for Jagajaga actually say? On 16 February this year the member for Jagajaga did a doorstop interview, discussing amongst other things the Commonwealth’s priorities when it came to school funding. She stated:

Over the last four years the increases from the Commonwealth to government schools has been about 20 per cent. So about a 20 per cent increase for students in government schools. For students in Catholic schools the increase has been about 25 per cent. For the students in independent schools, the wealthier schools, the increase from the Commonwealth has been over 150 per cent. That’s why we have so many parents who think the Commonwealth system of funding schools is unfair. This Government is giving the biggest increases to the wealthier schools in this country and that has to change.

I do not know what is Nazi propaganda about that. It seems to be a pretty clear statement of facts regarding the percentage increase that the Howard government has presided over when it comes to schools funding. On Sunday, 29 February, the member for Jagajaga did a doorstop interview in Melbourne. She was asked, in the context of the funding for needy Catholic schools—and, incidentally, Labor indicated we welcome the additional funding for needy Catholic schools—what sorts of needy schools she was talking about when she referred to schools which have not benefited under this government. She said:

There are many, many government schools just like our needy Catholic schools who also could benefit from additional Federal Government support. Just to give you an idea of the differences in increases—Geelong Grammar, here in Victoria, got an increase over the last four years from the Howard government of 240 per cent. Our local government schools have only got an increase from the Howard government of 20 per cent.

So what are the facts that the member for Sturt is asserting we are misleading the Australian public with? We are putting very simple facts to the Australian people, and they are the government’s own figures regarding the increase in funding that it has given to the wealthier private schools as opposed to the public school sector. This is not the place to have a long debate about schools funding. I am sure there will be other occasions when we can continue to articulate our view that there should be a needs based funding system and that the schools with the most need should receive the most funding support. One would have thought that was a fairly self-evident proposition. I want to emphasise that what we have seen from the member for Sturt is inappropriate, offensive, not in the spirit of appropriate public debate and, I would argue, part of a continued campaign by this government to attack in the most unseemly terms institutions, organisations or individuals who express a dissenting view from their own.
Environment: Genetically Modified Crops

Senator CHERRY (Queensland) (1.07 p.m.)—On 8 December last year the Senate passed a Democrat motion, moved by me, noting 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 wide-spread 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 ...

The motion called on the Minister for Agriculture, Fisheries and Forestry and the Minister for Health and Ageing 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.

On 18 February Minister Warren Truss responded to the Senate stating some quite extraordinary things. First, he said the text of the WAFF Grains Council recommendation referred only one matter to the ministerial council. This is not true. The confirmed minutes of the grains council meeting make it clear that all six matters were to be referred to the ministerial council. Further, the minister, as chairman of the ministerial council, was sent a letter by the WAFF Grains Section President on 24 November outlining the text. The motion was also sent to all other members of the council. It concerns me that Minister Truss does not recall receiving the letter.

Second, the minister said that the WAFF Grains Council did not authorise the circulation of the recommendations to the Senate via Senator Cherry. What point is the minister trying to make? The simple fact is that the grains council had passed the motion as policy and had acted on it. Was it a secret motion? Was the president trying to hide the motion? Since when was the Australian Constitution or the Parliamentary Privileges Act amended to require the authorisation of the WAFF Grains Council before its policies can be debated in this place? That is a ludicrous proposition.

Indeed, the fact that Mr Nicholl, President of WAFF Farmers, would raise such an issue reflects more on Mr Nicholl and his apparent desire for WAFF Farmers’s sceptical position on GMOs to remain confidential and not be acted on. The fact that WAFF Farmers Grains Section President, Peter Wahlsten, later described me as a Greens senator also reflects very poorly, I think, on its command of the political process.

Third, the minister said that the recommendations were ‘a work in progress towards the development of a WAFF Farmers GM policy in April 2004 and it would be premature for the ministerial council to consider the recommendations at this time’. I am no expert on the WAFF Farmers constitution, but the grains council minutes do not say that. Indeed, the motions are consistent with the
overall policy of WA Farmers on GM. Further, the WA Farmers Grains Council has already independently sent them to the ministerial council, as requested by its members. Indeed, the current policy of WA Farmers is to support the continued trial of research into GMOs and a moratorium on the commercial release of GMO crops, to be reviewed on a year by year basis.

Indeed, the letter from WA Farmers President, Colin Nicholl, in December 2003 to Mr Truss regarding the motions confirms that, whilst Mr Nicholl said the motions ‘did not represent WA Farmers policy’, ‘the issues raised are already incorporated in WA Farmers policy statement’. No wonder Mr Truss ended up a bit confused. Fourth, Mr Truss said, ‘It is not the practice of the PIMC to formally consider or comment on recommendations put forward by individual groups’ and ‘under existing PIMC policy, the recommendation of the WAFF Grains Council is a matter for the industry as a whole to address’. I presume that view will be reported to WA Farmers, as they are under the impression that the motions are being considered by the ministerial council as they had requested.

Of course, I encourage industry groups to develop an industry-wide approach to GM. Mr Truss’s view is disingenuous, as there is no avenue for industry to address these matters because the matters relate to restructuring the GTGC, the very committee that is claiming to represent industry. They also relate to asking for legal status rather than voluntary status as proposed, which is well outside the bounds of the GTGC. Yet the GTGC’s principles, despite the lack of agreement on its composition or outcomes, are to form the basis for the wholesale trials of GM in New South Wales and Victoria and have been effectively endorsed by AFFA.

The motion passed by the Senate was a request of the Senate, repeating a request made by the WA Farmers Grains Council that the matter be considered by the ministerial council. It appears that the minister places more credence on the personal views of the WA Farmers president than he does on the resolutions of the Senate and the WA Farmers Grains Council. That is an attitude that I find a little surprising and, frankly, courageous for a minister to take. The minister needs to recognise that there are plenty of sceptics out there in the farming sector about the benefits of GM; it is not just the WA Farmers Grains Council that is sceptical about the current regulatory regime of GM crops. The South Australian Farmers Federation believes:

… it is critical that South Australia does not commercially adopt genetically modified crops until a greater understanding of marketing, preservation strategies and robust stewardship programs are in place. It supports a transparent legislative and regulatory system that provides confidence to all stakeholders …

Its conference last year called on state and federal governments to delay the commercial release of GM canola until it can be shown that there will be minimal risks on other growers. The New South Wales Farmers Association has toughened up its GM policy in recent years. It supports a three-year trial in New South Wales, with further consultation following that trial before any commercial release. Further, the association insists that ‘all identity preservation issues affecting marketing and trade issues are fully addressed by government and industry’. It calls for an independent GM canola committee to monitor and report on trials and insists on strict guidelines for the trials. That has not happened yet.

Tasmania has a strong anti-GM position. AgForce Grains Queensland supports the continued research on GMOs and the right of producers to choose the technology, but it
also insists that, if a GMO is commercially released:

... producers choosing to utilise their traditional or current marketing and production system should not be negatively impacted in regard to supply chain costs or market access.’

The Victorian Farmers Federation rejects a moratorium but says that a number of significant questions regarding GM canola need to be answered through rigorous commercial-scale trials, including performance, weed control, volunteer control, cross-pollination, production costs, segregation capacities and the effectiveness of the industry stewardship program. The emphasis of all farming organisations is on the need to ensure that farmers reserve the right to farm GM or non-GM canola without additional costs. Yet there is no agreed protocol on how this can occur and no agreed protocol even on how coexistence can be trialled.

Of course, the Gene Technology Grains Committee has been working on these issues. But these committees are stacked with pro-GM advocates and they have proposed the weakest coexistence protocols I have ever seen. Indeed recently the protocols were downgraded to ‘principles’, which shows how weak they actually are. Yet, on 3 November, AFFA representatives told a Senate estimates committee that resolutions supporting the protocols had been passed by both the western and eastern zone GTGCs. This is simply not true as WA Farmers, as a member of the western zone GTGC, had not approved the protocols. WA Farmers President, Colin Nicholl, made it clear to his council that ‘WA Farmers were not prepared to sign off on the principles’. Indeed, the October resolutions of the WA Farmers Grains Council called for the GTGC to be restructured, that no costs or liabilities be imposed on a sector of the agricultural industry without the involvement and approval of that industry and that the GM industry be responsible for the containment of their GM product. The same meeting also called on the GTGC to amend the canola stewardship principles so that ‘canola’ meant non-GM canola rather than the other way around, as selling under a non-GM label requires a guarantee that there is no GM contamination, which is impossible to guarantee under the proposed segregation rules.

Australia’s largest grains company, AWB Ltd, also have a policy that publicly states that they do not consider the GTGC protocols adequate. The motion passed by the eastern and western GTGCs in October read:

That the GTGC acknowledge the CISP for Coexistence of Production Systems and Supply Chains form a basis for the continued development of a dynamic process towards the management of coexistence.

The notice to that motion stated:

This is an acknowledgement that phase one is complete in as much as the public consultation of the CISP has concluded and outstanding issues have been referred to the Canola Reference Groups for management.

That motion hardly reflects the ‘signing’ or ‘formalisation’ of protocols, as suggested by Mr Banfield of AFFA at the November estimates hearing. As Ms Julie Newman of the Network of Concerned Farmers put it:

The reality is that there are no practical GTGC on-farm segregation principles and they have not been signed off by farmer representatives, much less approved by the whole industry. The GTGC has only referred management problems to another committee, which does not even exist yet.

She warned:

If any State proceeds with GM Commercial release under inadequate management plans, it will be extremely difficult for other States to quarantine contaminated produce or to change the terms of management at a later date.

Yet, in the next few weeks, the New South Wales and Victorian governments appear set to approve broadacre trials of coexistence...
based on these flimsy and controversial coexistence ‘principles’. Up to 5,000 hectares of farms are to be planted. But to trial what? Against what criteria? How will the trials be judged as successful or not? These questions need to be answered before we proceed to such huge trials. They have not been. Minister Ian McDonald told the New South Wales parliament—

**Senator Ian Macdonald**—Not me.

**Senator CHERRY**—Another minister—thank you. Minister Ian McDonald told the New South Wales parliament last November: ... this trial was designed to test the stewardship program and protocols developed over the past year or so to ensure that genetically modified [GM] canola can be segregated from non-GM canola in the on-farm and post-farm handling and transport chain.

But there are no protocols; they are only principles. AFFA, the federal minister and the Victorian and New South Wales governments appear to have wiped their hands of these issues. This is simply not good enough. This is not responsible or accountable government. A recent survey by Biotechnology Australia found that the majority of farmers were strongly opposed to GM technology. So why force it down their throats when it is contrary to the policy of most Australian farming organisations and prior to the industry being properly prepared?

The Democrats are very disappointed in Minister Truss’s response to the Senate motion. We believe that the lack of effective and industry approved coexistence protocols is a matter of national significance that should be discussed by the Primary Industries Ministerial Council before wide-scale trials commence. That Mr Truss has declined to do so, and in the process sought to mislead the Senate and allowed his officers to mislead the Senate estimates committee, is a very poor reflection on this government’s commitment to rigorously scrutinise GM technology and to ensure that farmers have a full choice on whether to accept it.

### Superannuation: Judges

**Senator MASON** (Queensland) (1.20 p.m.)—Today I rise to speak on an issue of great impact on the integrity and stability of our system of government, the fruits of which we all enjoy but which is currently under populist attack by the Labor Party. Today, like my friend and colleague Senator Brandis, I want to oppose the assaults on Australian judges and their superannuation benefits. Ever since his elevation to the position of Leader of the Opposition, Mr Latham has been charging round Australia on his high horse of the lowest common denominator. In that process the man who once tried to reinvent himself as a battler made good has, instead, merely succeeded in demonstrating that the new Labor emperor wears no clothes, that underneath all that shiny, civilising global capital veneer is still the same old Labor Party, whipping up the politics of envy, mowing down tall poppies, fomenting bitterness and fomenting resentment.

For all the talk about empowering and lifting people up it seems that Mr Latham is at his happiest when he is tearing somebody down. By the time his bus tour of envy wound down, Mr Latham had managed to chalk up yet another target for his fake, populist indignation—Australian judges. Mr Latham has now committed the Labor Party to reducing the pension entitlements of judges. The proposed changes would see the current pension arrangements scrapped and judges shifted to a so-called ‘community standard superannuation scheme’. It has been calculated that this shift would constitute a 60 per cent reduction in judges’ superannuation entitlements.

There are two very important reasons why the current system should stay: firstly, for the
sake of ensuring that our benches continue to attract the best judges and, secondly, to ensure that the principle of an independent judiciary is maintained. Judges’ salaries and superannuation might seem excessive to Mr Latham and his Labor colleagues, but they are hardly excessive when compared with what private legal practitioners earn and put away for retirement. The fact of the matter is that the overwhelming majority of our judges come from the very senior ranks of the bar and thus take a very significant pay cut when they assume their new role. By providing them with generous superannuation, we are simply providing one incentive for the top legal minds of our nation to sacrifice a much higher potential earning for the sake of public service. But, for Mr Latham, that is not good enough. A few weeks ago, Mr Latham told Alan Jones:

Well, we have to cultivate public service. I mean life is more than putting money in your pocket. I think there is a thing called public service that matters and, whether you are in the executive arm of Government in Parliament or in the Judiciary, that ancient ideal of public service that draws people into public life I think is a very good motivation that we should foster.

What that means in this context, however, is that Mr Latham believes that it does not matter if our judges are monkeys, as long as they would be happy getting peanuts. Gregory Hywood put it slightly more politely in the *Sydney Morning Herald* a few weeks ago. He said:

Sure there will be candidates ... But much talent will never appear. There will be a tendency to the doctrinaire and ideologically obsessed over the calm and thoughtful, the lower level public servant over the private sector candidate, hacks over leaders.

Mr Hywood was speaking about politicians and their superannuation, but his words ring true when they are applied to judges. Mr Latham and his Labor colleagues might well be quite happy to see fewer top barristers as Australia’s judges, with our benches filled instead with third-rate union lawyers short on knowledge and experience but with a very highly cultivated sense of public service. For the rest of us, however, it would be far more reassuring to know that our justice system is in the hands of the best, most able and most qualified people that we can find. If that means paying for them as we are doing now, so be it—we should pay. The other day, Mr John Rau, a Labor member of the South Australian parliament, said:

We want the best people for the job, not the only people who are prepared to put their hands up, or the only people who are left after everyone else has said they are not interested.

Mr Latham still does not get it. Lamenting how the money we pay our judges offends the ‘community standard’, he told Alan Jones:

In an electorate like mine, a medium income would be less than $50,000. You have to have regard for that. You have to be in touch with the needs and interests of the people you represent ... Salaries up to $300,000 and $400,000, I honestly don’t know how people spend that much money.

Shock, horror! Perhaps Mr Latham wants to have a ceiling put on people’s incomes and on their effort. Government, after all, knows better. Mr Latham’s own electorate is perhaps not such a good example to throw around. The median weekly family income in Werriwa is above $1,000, which puts it in the top one-third of Australian electorates as far as that measure is concerned. God help us if the Werriwa battlers actually take it upon themselves to lift themselves up without Mr Latham’s permission. God help us if some of Mr Latham’s electors do aspire to high achievement—aspire to become judges and aspire to the very top. Of course, the Labor Party do not like people who aspire. They talk about it but, if those people get there, they will vote for us. Labor do not like that.
Mr Latham does not seem to understand that this important issue is about much more than money. In 1997, the Senate Select Committee on Superannuation concluded:

The judicial pension scheme does indeed have a greater role than just being part of a remuneration package. The Committee recognises that judicial independence is a guarantee of the impartiality of the judiciary, which underpins the federal nature of the Commonwealth, and the protection of individual rights. The Committee shares the widespread view that secure and adequate judicial remuneration, during retirement as well as during service, is essential to judicial independence.

The committee was referring to the fact that not one of the public submissions it received during its inquiry called for a reduction in judges' superannuation benefits. Not one.

Senator Brandis—It’s just an election stunt.

Senator MASON—Of course it is an election stunt, Senator Brandis. There was not even one from Mr Latham who, as we will recall, was still ‘civilising global capital’ in 1997. That was before he got back onto rediscovering the politics of envy. It is safe to say that we as a nation do not sufficiently appreciate our justice system and our judges. We take it for granted that our judges are impartial; that they are not influenced by politicians or other powerful interests; that court proceedings are transparent, free from bias and free of corruption; and that equality before the law and the rule of law are the guiding principles of our legal system.

We have grown so used to our legal system and our justice system that we do not quite appreciate that we have one of the best judicial systems in the world. We forget how appalling life is in many corners of the world where there is no independent judiciary. We forget the tragic social and economic effects this lack of judicial independence has—that is, the injustice, the arbitrariness, the favouritism and the corruption affecting both the aggrieved individuals and whole societies—because no-one wants to do business in countries where there is not a government of laws but a government of men. We are indeed very fortunate in Australia. Instead of having the best judges that anyone can buy, we have the best justice system that our money can buy. Our success as a truly great democracy, as a free and liberal society, as a peaceful multicultural nation and as a world-class, open and thriving economy is largely due to not just the hard work and the character of the Australian people but also the stability and good performance of our national institutions—and our judiciary is one such great institution.

Alas, there are those who seem to be quite happy to enjoy the benefits of living in one of the world’s great democracies but are unwilling to pay the price. The Labor Party is only too happy to stoke the fires of envy and resentment. After all, it is in the Labor Party’s interests to make people believe that they are victims, that if they are not as wealthy and successful as they could be it is because somebody else is and the system is against them. Perhaps most dangerously, the Labor Party makes people believe that we as a nation can continue to have something for nothing, that in this instance we can have a Rolls Royce judiciary at Crazy Clark’s prices. Alas, once we leave the Labor universe and return to the real world there are no free lunches. Democracy has its price, transparency has its price and the rule of law has its price. If Labor is not willing to pay that price then one thing is certain: all Australians will ultimately have to pay that price when our justice system fails to attract the best talent and opens judges to increased pressure and interference from those politicians that hold the purse strings.

I am saddened to see that Mr Latham, who once used to have some interesting and constructive things to say, has become a one-
man conga line of suckholes sucking up to the proverbial battler’s worst prejudices. I am saddened to see that Mr Latham, instead of educating the public about the benefits of our great national institutions, has chosen to appeal to the lowest common denominator. I am saddened because Mr Latham’s new Labor was supposed to be all about helping aspirational voters, lifting people up and promoting excellence. The superannuation schemes for people who gave their working lives to public service were the proud legacy of Labor’s Ben Chifley, but the only light on the hill now comes from Mr Latham’s burning of our national institutions just to keep his electoral prospects warm.

Agriculture: Sugar Industry

Senator McLucas (Queensland) (1.33 p.m.)—The Howard government should be condemned for its failure to include the sugar industry in the so-called free trade agreement with the United States of America and to properly and effectively work with the sugar industry over the last seven years. The sugar industry and the people of Queensland have been lied to by this government—and I do not say that lightly. The government has led sugar growers, harvesters, millers, mill workers and sugar communities down the garden path. The impact of the government’s decision to cut sugar loose from the free trade agreement deal is enormous, and the struggling sugar growers are understandably sceptical—

Senator Brandis—How would they be better off if we hadn’t signed the agreement, Senator McLucas?

Senator McLucas—I will get to that, Senator—struggling sugar growers are understandably sceptical that yesterday’s announcement, the Cairns Post editorial had this to say:

Its effectiveness will be miniscule unless it reaches those in need. If history is anything to go by, many farmers will find they are not eligible to receive the household support on offer. The $21 million assistance package won’t go far.

Yesterday the nation’s chief commodities forecaster warned farmers would have to endure almost below cost prices for years to come while other nations heavily subsidised their own sugar producers.

I believe the editorial in the Cairns Post has very neatly summed up the situation. The government’s assertion that the sugar industry will be no worse off as a result of the free trade agreement deal is simply rubbish. Ross Walker, from the Australian Cane Farmers Association, said that the promise of the $21 million package and $5.6 million in support for business planning fell way short of securing the industry. At meetings in Gordonvale and Innisfail yesterday, he said:

We need decoupled income support which is WTO compliant. At the projected price, we could lose 10 per cent of our growers from some mill areas, which could cause them to collapse. Mr Howard’s announcement is just a quick fix, short-term measure.

I think Mr Walker is correct—these are quick fix and short-term measures leading up to an election later this year. Given the ABARE prediction that low prices and the impact of the rising Australian dollar will be ongoing for four to five years, let us hope the Howard government does come up with WTO compliant support measures—and very quickly.

This government has signed off on something that it calls a free trade agreement that is not based on free trade; it has signed off on an agreement that is not based on any serious understanding of what free trade is at all. Minister Truss made this admission last month:
It is not only the cane farmers that will have to be looked at. We have to understand that other people will also be impacted. There will be some jobs lost; there will be some other small businesses that used to supply various elements to the industry that will have to be looked at.

These comments indicate a comprehensive approach from the government, but that is not what we have seen delivered so far. The sugar industry has every right to be sceptical that a comprehensive WTO compliant package will be delivered by this government. That is because, as I said in my opening remarks, the sugar industry was lied to by this government before the FTA with the US was signed.

On 15 January, Minister Vaile said that he wanted:

... a good outcome in this as far as agriculture is concerned. We’ve maintained that all through.

We’ve continued to maintain that sugar must be part of this package.

He went on:

Well, we’re not going to leave sugar out. I mean, what we’re saying is that sugar is as important to us as a number of issues are to the United States.

He then emphasised it even more strongly with the comment:

I mean, it is crucial.

Obviously, when push came to shove and he was sitting across the table from his US counterparts, it was no longer so crucial.

On 21 January, Minister Vaile continued to maintain the government’s position, no doubt by this time very mindful of the looming Queensland election. He said on that occasion:

We’ve sought to do a comprehensive deal across all sectors, including agriculture, including sugar, and we’ve said that sugar must be part of the deal and we’re not conceding that.

Clearly Minister Vaile’s definition of a comprehensive trade deal differs markedly from that of the Labor Party. He also said that he was going to:

... fight hard on all those fronts and to fight hard, particularly on the front of sugar. It is the most corrupted and distorted commodity traded in the global marketplace.

It is clear that there is enough commentary on the public record from the leadership of this government to completely justify the level of distrust of Liberal and National Party politicians that now exists throughout all cane communities in Queensland.

What has the sugar industry in Queensland missed out on? I am disappointed that Senator Brandis has left the chamber, because this is the answer to his question. The National Party member for Hinchinbrook, Mr Marc Rowell, summed it up pretty well in a letter to the Prime Minister expressing disappointment at the FTA outcome for sugar. In the Cairns Post of 12 February he warned Mr Howard that the future of the sugar industry is in:

... grave danger, with many growers unable to continue with current and forecast prices.

Mr Rowell is the state National Party’s primary industries spokesman. He also said:

The lucrative price being received by US growers of three to four times the current world price would have improved returns to Queensland’s industry facing declining world prices and an escalating Australian dollar.

That is the answer for Senator Brandis, from his colleague. Mr Rowell also points out that there ‘had been high expectations the FTA would offset current difficulties’. To maintain that no-one in the sugar industry will be worse off in light of the ‘three to four times the world price’ scenario so beautifully articulated by Mr Rowell shows us that this government is simply in denial about the extent of its failure.

The government’s tactical modus operandi on this deal also fell far short of good gov-
ernance. In fact, within the context of the state election in Queensland, their behaviour can only be characterised as deliberately deceptive and misleading. The timing of the announcement, immediately following the election, is at least suspicious and at worst downright deceptive. The Howard government had the ability—and I would maintain, the responsibility—to inform cane communities of the progress of negotiations during the week leading up to the state election on 7 February. But rather than use his influence and special status as a friend of the United States President to hammer out a deal for sugar growers, it seems that the Prime Minister’s major concession may well have been to delay the announcement in an attempt to advance coalition interests in Queensland’s sugar seats. No doubt my Labor colleagues will vigorously pursue the timing issue during the inquiry of the Senate select committee into the FTA.

Despite yesterday’s funding announcement, cane communities have grave doubts as to this government’s ability to provide the sort of positive leadership needed to deliver a return to long-term prosperity—and little wonder! The government’s track record is abysmal. For Senator Boswell to suggest in the Courier Mail, as he did recently, that the government’s approach to sugar can be likened to the industry planning that was put in place—by the Labor Party, I must point out, as he failed to do—for the car industry is simply laughable. The rescue package is the Howard government’s fourth attempt at industry restructuring since 1998. Very little of the $60 million promised in 2002 has been distributed to a single grower or industry participant.

The warning signs for the region are dire. A recent study commissioned by the respected regional development organisation Advance Cairns outlines some ‘first glance’ figures that show severe economic downturn if the sugar industry were to collapse. These show that, in the case of a sudden and complete demise of the industry, 15,000 jobs would be at risk in the Cairns region alone and the loss of economic activity in the region would be around 12 per cent.

On 11 February, the Burdekin Shire Mayor, Councillor John Woods, said:

... many sugar farmers were already baulking at planting another crop and looking at ways to exit the industry.

He also said:

The situation at the moment is line ball for them because they can’t make any money out of producing a crop.

However every sugar town must have a certain number of people in the district in order to maintain their own economy. Each time a person leaves the industry that impacts on small businesses in the town and region. This can then have a snowball effect.

He went on to say:

From statements made by the Prime Minister and his deputy recently, I don’t think they know how much this has impacted on the sugar towns of Queensland ... the highly subsidised US sugar industry would never want competition from far more efficient Australian sugar farmers.

He is right. Our farmers have become extremely efficient sugar producers. Remaining locked out of the US market locks them out of the benefits that should have flowed to them from the FTA. It locks their communities out of a prosperous future because of the intrinsic linkage between sugar farmers and their local economies.

Senator Ian Macdonald—You simply do not understand.

Senator McLUCAS—are you saying that Mr Rowell doesn’t understand?

Senator Ian Macdonald—if Mr Rowell is saying that, he does not understand.

Senator McLUCAS—Mr Rowell doesn’t understand—that is a nice quote we will use...
next time. That is the fact of the matter and that is why the Prime Minister and Ministers Vaile, Truss and Macdonald should hang their heads in shame. They have fiddled for too long while the cane communities of North Queensland have burned.

There are other matters associated with the FTA that should concern primary producers of other commodities in other regions. For example, when it comes to avocados, countries such as Chile, the Dominican Republic and Mexico have negotiated far better market access than Australia. In 2002, Chile exported almost 80,000 tonnes to the US, Mexico exported about 25,000 tonnes and the Dominican Republic accounted for 10 per cent of US imports with over 10,000 tonnes. Australia has a cap of 4,000 tonnes and we are yet to even begin the long and expensive process of meeting the US government’s quarantine requirements. Senator Ian Macdonald’s fine words in this chamber about the access of avocados to the US market ring very hollow in the avocado farms of Queensland.

Having allowed sugar to be excluded, common sense would suggest that Minister Vaile is now placed in a difficult—almost impossible—negotiating position when it comes to access for sugar or, indeed, other primary produce in other markets. It certainly undermines our position with respect to the World Trade Organisation, and he clearly will have some tricky explaining to do when he chairs the Cairns Group’s next meeting in Costa Rica. And then there is the impact of allowing Australia’s outstanding quarantine system to be subject to the operations of a technical working group which we have been advised will ‘engage at the earliest appropriate point in each country’s regulatory process to cooperate in the development of science-based measures that affect trade between the two countries’. This means we have given the US a front row seat in determining our quarantine regime.

Similarly, we have seen a dramatic turn-around in Biosecurity Australia’s treatment of bananas, whereby 20 months ago imports from the Philippines posed too great a threat but suddenly the door for importation has been flung wide open. In response to banana growers’ concerns, Minister Truss yesterday slammed the move to establish a Senate inquiry into this matter. Australia’s quarantine regime is designed to ensure our primary production is clean and free from pests and disease. This is not protectionism; it is good economic sense to ensure that our quarantine status is based on science not trade.

So it is not just the sugar industry that needs to be concerned at the way this government is hammering farmers, particularly in North Queensland. I also note concerns today spelt out by the tobacco industry in Mareeba, a town that stands to lose up to $50 million from its local economy. The Howard government has failed farmers in North Queensland on a number of fronts. Today’s headlines in the Cairns Post state ‘Tobacco a $50 million dollar loss for Mareeba!’ and ‘Warnings as (sugar) farmers win compo!’ Banana growers are being slammed by Minister Truss for putting money into publicity campaigns. These are the key primary industries on which the regional economy and the communities of North Queensland depend. Labor’s leader, Mark Latham, knows this and, when speaking about sugar on 27 February, he said:

This is an industry that deserves a good future. It is an industry where you have got hard working people, you have got productivity gains, you have got leadership, you have got the magnificent natural resource, the brilliant land and sunshine. You have got a product which is being consumed in every Australian household every day of the year, so it is an industry that should have a bright future
if they can get some fair pricing and some trade
access ... and we—
that is, the Labor Party—
will be keeping the pressure on the Federal Gov-
ernment to ensure that happens.

(Time expired)

Morant, Lieutenant Harry ‘Breaker’
Handcock, Lieutenant Peter

Senator McGauran (Victoria) (1.48
p.m.)—I wish to bring to the attention of the
Senate a notice of motion that was put in
2002 that still sits on the table today. That
motion related to the unjust execution of
Harry ‘Breaker’ Morant and his colleague
Peter Handcock and was put 100 years on
from that infamous execution. On 27 Febru-
ary—last Friday—it was 102 years since
their execution, and I take this opportunity to
restate the sentiments of that motion, which I
put in the Senate some two years ago. It
stated:
That the Senate—
(a) notes that:

(i) it is the 100th anniversary of the execution
of Harry ‘Breaker’ Morant and Peter Handcock,
killed by firing squad during the Boer War for
following the orders, take no prisoners.
Morant claimed that he was acting under
Kitchener’s orders to take no prisoners, a
very common order of the day. It was in fact
the Boer War’s code red. It was the unwritten
rule 303, meaning shoot to kill. It was named
after the .303 cartridge used as a standard in
the rifles of the day. The motion went on to
say:
(ii) the court case held for Morant and Hand-
cock was a sham, set up by Lord Kitchener, the
giver of the orders Morant and Handcock fol-
lowed.
There is enough evidence to conclude that on
the balance of probability the order was
given. The motion then went on to say:

(iii) the injustice to Breaker and Handcock has
plagued Australia’s conscience since their execu-
tion on 27 February 1902.
The court case was a sham. It was evident it
was a sham from the records—the whole
conduct, the evidence given, the sentencing
was a sham driven by the sacrificial politics
needed at the time. The motion went on to say:

(iv) in 1902 the then Federal Parliamentarian
and later first Governor-General of Australia,
Issac Issacs, raised the matter of the execution in
Parliament stating that this issue was agitating the
minds of the people of this country in an almost
unprecedented degree, and questioned the validity
of the decision,

(v) the reason we need to go back 100 years to
now right this wrong, is because Breaker Morant
is one of the fathers of our ANZAC tradition; a
friend of Banjo Patterson and an inspiration for
much of his poetry and described as a man of
great courage who would never betray a mate;
and a man of whom many of the young ANZACs
in World War I had heard and on whom they
modelled themselves.
The motion then went on to say:

(vi) Lord Kitchener was the Commander-in-
Chief of the British Military who made the deci-
sion to commit troops to Gallipoli and is respon-
sible for that disastrous campaign;
It went on to then move that the Senate:
(b) calls on the Government to petition directly
the British Government for a review of the case,
with the aim to quash the harsh sentence of death
for Harry ‘Breaker’ Morant and Peter Handcock; and
(c) take action to include the names of these two
Australians on the Roll of Honour at the Aus-
tralian War Memorial.
What can be said about the two main charac-
ters in this story: Breaker Morant, a battler
who had all the Australian traits that we ad-
mire; the other an upper class British lord
who denied the truth of his own orders just to
save his own skin. Frankly, it was Lord
Kitchener who should have faced the firing squad.

It is worthy to note that later this month in Western Australia the elite fighting force, the SAS, based in Western Australia, is holding a renewed trial of Breaker Morant and Peter Handcock. The retrial will question whether or not Morant was guilty, and there will be two sides to that particular story. It is interesting to note that significant members of the SAS are putting on this particular debate. Why would that be so? I would say it is because Harry ‘Breaker’ Morant belonged to the Bushveldt Carbineers, an elite fighting force of its day, which in all respects was the forerunner to our elite fighting force today, the SAS. I bring this matter again to the attention of the Senate.

Agriculture: Sugar Industry

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.54 p.m.)—In the few minutes left to me in this debate I want to refer to some of the misconceptions and complete misunderstandings of Senator Jan McLucas in her contribution on sugar and primary industries in North Queensland. Senator McLucas maintains the sham that her leader does, that if Australia had refused to sign the American free trade agreement then sugar would be better off. I simply cannot understand how Senator McLucas can be so dense as to maintain that argument. If Mr Latham were Prime Minister—heaven forbid—and Senator McLucas were the primary industries minister—heaven forbid—how would refusing to sign an agreement that does so much good for the rest of Australia’s agricultural industries help the sugar industry? It could not possibly help the sugar industry if we refused to give that benefit to the beef farmers, to the dairy farmers, to the avocado farmers or to the lamb and sheepmeat industries. It is simply nonsensical, and I am dismayed that Senator McLucas continues to maintain that proposition when anyone with a modicum of commonsense would understand that it is just not relevant.

Senator McLucas also tried to pretend that yesterday’s announcement of income assistance for badly affected sugar farmers was the sugar package. It was made quite clear by the Prime Minister in the other place and by me in this place that that was a first-stage instalment. The Prime Minister has indicated that he will be having extensive consultations with the industry in the next little while and will come back with a package which does recognise the importance of the sugar industry and does something serious to help them through this very difficult period. If Senator McLucas did not understand that, can I suggest with the greatest respect that she clear out her ears, because I clearly said that and the Prime Minister has very clearly said that.

Senator McLucas also talks about avocado farmers and says what a bad deal this is for them. Prior to the American free trade agreement there were tariffs on the importation of avocados; now there are going to be no tariffs on avocados. How can that be a bad deal for avocado producers? They are much better off since the free trade agreement than they were before, so it is a big step forward. Senator McLucas also tried to do what the Labor Party is regrettably too competent in doing these days—that is, picking up on difficulties and making a political issue out of them, not trying to help at all.

She referred to the import risk assessment process with the banana growers. Senator McLucas should know there is a 60-day period for the banana industry to put their case to government. They have done that with me today, and I am sure they will do it with many other people who they think understand the issue. For that reason, I suspect,
they have not been near Senator McLucas. This is a science based matter. It is done on the basis of the best science that is available to Biosecurity Australia. Why do we do that, Senator McLucas? Why do we try to make sure that trade is as free and open as it can be? It is because seven out of 10 farmers in Australia have to export to other countries to stay in business. So all of Australia benefits from freer trade. That is why we cannot put non-tariff barriers on some of the product that is intended to be imported into Australia and at the same time expect other countries around the world to accept our produce. We must have free trade to continue to exist. That is why we have to seriously look at import risk assessments. We have to look at all industries and we have to make sure that decisions that we make in those industries are made on the basis of science and not on the basis of political expediency.

I conclude by again saying that there are difficulties in some of the rural industries, but those difficulties are being handled infinitely better by Mr Truss and the Howard government than those primary industries would ever expect from a Labor government, a party that shows no interest whatsoever in primary production. I ask you if that was the policy you were seeking to advance, but hiding behind. So, first up, I do not accept your variation on a theme. I simply asked you if you were trying to get away with advocating another policy without having the stomach to get up and do it. The ATSIC review did recommend that ATSIC be placed back in ATSIC, but that there be separation of powers. I personally do not believe that you can effectively have separation of powers within the same organisation—other people do. My view is not the only view to be taken into account here. I am consulting with ATSIC commissioners, members of the government and others as to what should be done across the board in relation to ATSIC.

The Prime Minister is right when he says that ATSIC has not served the Indigenous community well. But I add that none of us—I have said this on plenty of occasions, and I said it before the Prime Minister made those remarks—whatever party persuasion, whatever level of government, can say that what we have done over decades has served Indigenous Australians well. If that were the case, Indigenous Australians would not face the problems they now face. That is my view, it is the view of many people in the govern-

QUESTIONS WITHOUT NOTICE

Indigenous Affairs: Funding

Senator O'BRIEN (2.00 p.m.)—My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. I refer the minister to her answer to my question yesterday in which she pilloried the concept that ATSIC and ATSIS might be brought back together. Didn't the government devote over $1 million of Indigenous funding to the review of ATSIC which specifically recommended that ATSIC and ATSIS be brought back together as a single organisation with the elected and administrative arms—I quote from the report—"reunified"? Has the minister rejected the outcome of the $1 million ATSIC review? Or was the review no more than a sideshow for the government, albeit an expensive one?

Senator VANSTONE—Senator, yesterday I did not pillory the suggestion of a reunification. I asked you if that was the policy you were seeking to advance, but hiding behind. So, first up, I do not accept your variation on a theme. I simply asked you if you were trying to get away with advocating another policy without having the stomach to get up and do it. The ATSIC review did recommend that ATSIS be placed back in ATSIC, but that there be separation of powers. I personally do not believe that you can effectively have separation of powers within the same organisation—other people do. My view is not the only view to be taken into account here. I am consulting with ATSIC commissioners, members of the government and others as to what should be done across the board in relation to ATSIC.

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ment and I believe it is the view of most people in the community. So I put it to
ATSIC that the status quo is not an option.

What we are doing now is not delivering on the ground. You can ask anybody whether they like being a commissioner or whether they think it should be designed this way or another, but go out to Halls Creek or Oombulgurri or Yirrkala or any of the remote communities and ask them whether ATSIC is serving them well. But that is, in a sense, an irrelevant question. Ask them whether they, personally, are getting value for money—not just the money that this government is spending now but also what the state governments and local governments are spending on the delivery of services. Are they getting value for money? Have they ever believed they are getting value for money? The answer will be no. I have a brief opportunity to play a part in changing that policy—and hopefully to make a difference—and I intend to take it.

Senator O’BRIEN—Mr President, I ask a supplementary question. I note the minister’s answer. I took her comments yesterday to be dismissing the concept of reunification, hence the question today. I take it from the minister’s answer that she believes that it is impractical. Can the minister indicate if she intends to respond to the review in a public way— and hopefully to make a difference—and I intend to take it.

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Senator V ANSTONE—I do not think it will come as any surprise to indicate that there is a short period of time to respond to the ATSIC review for a couple of reasons, not the least of which is when the next ATSIC elections are. It being an election year, there is necessarily a limited amount of time on the legislative timetable. My absolute commitment is to make sure that anybody who participates in this debate understands that we have all failed—that is the most pessimistic way to put it. But none of us, of any political persuasion and at any level of government, have been successful, and we all have to be looking for a better way. That is not to absolve ATSIC; they are a part of this—but so is everybody else.

Economy: Growth

Senator McGAU RAN (2.05 p.m.)—My question is to the Minister representing the Treasurer, Senator Minchin. Will the minister advise the Senate of recent indicators of the strength of the Australian economy and how the Howard government’s responsible economic management is continuing to boost economic growth? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator McGauran for his question. Today the national accounts confirm that the Australian economy is continuing its remarkable run of strong, low inflation growth under the careful management of the Howard government. The economy grew by a very substantial 1.4 per cent just in the December quarter, which equates to four per cent over the year 2003. This is the strongest growth we have had in four years, and it confirms that we have come through what was a very difficult year in 2003. We had Australia’s worst drought in 100 years, the SARS virus, the US still in recession and the uncertainty created by the war in Iraq. So to get that result was stunning. It is very pleasing that growth in the farm sector in the December quarter was 13.3 per cent—a big rebound from the drought. It is very good news that private
business investment rose by 3.5 per cent in the quarter, to amount to 10 per cent over calendar year 2003. New engineering construction was up 13 per cent in the quarter, or 22.5 per cent higher than in the previous year.

The measure of profits, the gross operating surplus—which caught one Labor Treasurer out in the past—is now 12.1 per cent higher than a year ago. So company profits are very strong. Inflation is still subdued. The national accounts measure of inflation shows just 0.4 per cent in the quarter, or 1.5 per cent through the year. Very importantly for the Australian economy, labour productivity was up significantly—3.3 per cent over the year—producing average non-farm compensation per employee, their measure of wages growth, of 3.4 per cent in the year. So there was strong wages growth and real wages growth. The total jobs growth in 2003 was 187,000 new jobs. To sum up the economic picture revealed by today’s national accounts, we are right up at the top of the world growth league. Inflation remains very low. Labour productivity is rising strongly, underpinning real wages. Company profits are rising. There is strong investment, strong jobs growth and unemployment is low.

The important point out of all this is that it just does not happen by chance. This is not a matter of good luck. This is directly the result of good economic management. You cannot just assume that this is going to happen whatever policy choices the country makes. We have achieved this sort of economic growth because we have brought hard decisions to bear on the national economy and have done so in the national interest without much help, I must say, from those opposite. If you do not continue to make these sorts of tough, strong, disciplined decisions in the national interest, then these economic dividends will disappear. That is why we have advocated—sometimes to our electoral cost—strong economic policies and strong policies to deal with the inevitable ageing of our population and to encourage greater labour force participation.

We do have to continue championing higher productivity. We do need to liberalise the labour market to continue high productivity. We do need to implement the free trade agreement with the world’s biggest economy, the United States. We do need to eliminate government debt through selling the rest of Telstra. And we do have to encourage work force participation by reforming the disability support pension and getting the Pharmaceutical Benefits Scheme on a sustainable footing. These are all critical policies to sustain the sort of economic growth we have at the moment. We do need the opposition’s support to get these measures through. That support has been sadly lacking throughout the party’s period in opposition.

**Indigenous Affairs: Funding**

*Senator O’BRIEN (2.09 p.m.)*—I ask a question of Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs. I refer the minister to advice provided to the ATSIC board by eminent Sydney QC David Jackson to the effect that the new provisions establishing a body to engage in ATSIC activities means that ATSIS could not lawfully expend funds appropriated to it for purposes contemplated to be performed by ATSIC under the act. Isn’t this advice to ATSIC consistent with the confidential advice from the Australian Government Solicitor to Minister Ruddock on 9 April 2003 warning in that 18 pages of advice:

- The area of greatest risk would be the allocation of the CEO to DIMIA, or the creation of a new prescribed agency and executive agency ...

- And again:
The creation of a prescribed agency could be challenged, principally on the basis that the current statutory arrangements in the ATSIC Act prevent the creation of such a body?

Minister, why did the government decide to go with this option when the government’s own secret legal advice was highlighting these risks?

Senator VANSTONE—I will have to refer the details of that question to Mr Ruddock because obviously Mr Ruddock made the decision. I can assure you of a couple of things, Senator. Subsequent to publicity being given to the fact that ATSIC had some separate advice, I wrote to the chairman of ATSIC and indicated that I thought it was appropriate that I be given that advice so that we could have a look at it. There was a meeting in my office this morning, at which I was not present due to other commitments, and the advice I have is that the writers of the first advice to the government, that is, from the government, were there and their advice was gone through in detail. They stand by their advice. They are completely satisfied with their advice. For the benefit of people who might not have read things in the paper and have not had some experience of these sorts of issues, I think the point that needs to be made is this: when you get really good legal advice it does not just tell you what you want to hear. Good legal advice will tell you whether you can do this or that and it will always highlight what someone who wants to attack you will argue. In the end it will come to a conclusion as to whether it is appropriate and you can do what you want to do.

The advice I had this morning is that the advice we were offered in April quite obviously does that, and so it should. If I got legal advice that did not highlight the risks I would send it back and say: ‘Please advise of any risks. Please advise what our opponents will say.’ I would absolutely do that. That is the advice we got. With advice of the risks in mind we nonetheless proceeded because the advice was that we could proceed, and we are satisfied with that.

Senator O’BRIEN—Mr President, I ask a supplementary question. The advice was that the safest option was to proceed to fund DIMIA. I refer the minister to the commitments given to ATSIC, the opposition and the Australian people in April last year which indicated:

ATSIC Commissioners and Regional Councillors will continue to determine policies and priorities for the spending of money [and] ... there will be very little change for ATSIC’s elected arm.

That is from Mr Ruddock. Given that Mr Jackson QC and the government’s own legal advisers have exposed the reality of ATSIC’s shell existence, lacking even the power to give directions to public servants, will the minister restore to ATSIC the power to determine policies and priorities for the spending of money, or were Mr Ruddock’s false assurances designed to smooth consent for this government’s firmly held but unannounced agenda to gut ATSIC?

Senator VANSTONE—Senator, I do not thank you for that question—

Senator O’Brien—It is the truth!

Senator VANSTONE—You are entitled to ask whatever question you choose and put it in whatever format you do. I simply reject the assumptions that you put there. I would have hoped that whatever political persuasion was here would accept two propositions: first, that what all of us have been doing has not been working and therefore we would accept the second proposition, namely, that there needs to be change. If ATSIC were confident that their legal advice entitled them to challenge the government’s actions they would have done so, and they are free to do so. There is a reason that they
have not and that is that the government’s legal advice is sound.

**Foreign Affairs: Iraq**

Senator **CHAPMAN** *(2.14 p.m.)*—My question is directed to the Minister for Defence. Will the minister inform the Senate of the government’s response to the overnight bombings in the Iraqi cities of Karbala and Baghdad? How have these attacks further highlighted the importance of the international effort to deliver freedom and security to the people of Iraq?

Senator **HILL**—I thank Senator Chapman for his question. I would like to commence by expressing the government’s deep sympathy to the Iraqi people and to the Pakistani people over the horrific terrorist attacks that occurred yesterday. These attacks occurred on the holiest day of the Shiite calendar and are a measure of the desperation of those who seek to fracture international efforts to ensure peace in the Middle East region. I am advised that no Australians were involved. These attacks serve to strengthen our resolve to continue to contribute as one of at least 35 nations now working with the Iraqi people to restore peace and security in Iraq. The coalition continues to support efforts to build effective Iraqi institutions that are capable of taking on the job of delivering essential services, security and democracy to the Iraqi people.

In fact, these horrible events can be contrasted with some real successes. Under the former regime in Iraq, schools and education standards were inadequate and highly politicised. Last month the last group of 33,000 secondary school teachers graduated from a training program delivering modern training skills, a critical investment in Iraq’s future. Iraq’s health services also continue to be modernised. The Coalition Provisional Authority advises that all 240 hospitals and more than 1,200 primary health clinics are treating patients. Teams of experts are visiting hospitals to help prepare and upgrade medical equipment, providing access to improved health services to more Iraqis. Also, nearly 200,000 Iraqis are now serving on duty in Iraqi security forces, and many more are in training. Their support of coalition forces has resulted in a marked reduction in attacks on Iraqi facilities such as oil pipelines. That they continue to work despite being targeted demonstrates their commitment to building a new Iraq.

Iraq also needs a well-trained and professional defence force. The Australian Defence Force is making a valuable contribution to rebuilding Iraq’s military. An advance party of Australian sailors is in location and others will follow by April to support training operations for the recently established Iraqi Coastal Defence Force. These sailors will work with coalition colleagues to train Iraqi sailors in small vessel operations for eventual employment on the five patrol boats that will shortly join the Iraqi Coastal Defence Force. ADF personnel are part of the coalition military assistance training team providing training and policy support to the Iraqi armed forces. They will ensure the new Iraqi army will be a professional and well-trained organisation. Australian trainers have helped establish the first Iraqi brigade, and last week I announced our commitment of a further 53 Australian Army personnel to form part of the coalition training effort for the new Iraqi army. Most will be responsible for training three Iraqi army battalions, and some will form a security detachment for the training team as the Iraqi base is outside of Baghdad. The remainder will be attached to coalition training headquarters to assist with the development of training doctrine, plans and tasks. The Iraqi people, who have suffered so much, will succeed, but only if the international community remains committed and engaged.
Superannuation: Reform

Senator SHERRY (2.18 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. I refer to the Treasurer’s comments on retirement income and superannuation last Thursday on ABC 720, when he said, ‘There’s going to be no such thing as full-time retirement.’ What does this mean for Australians approaching retirement?

Senator COONAN—If I understand him correctly, Senator Sherry has asked me whether it is intended that people cannot retire. That is absolutely a nonsense, and it is extraordinary that Senator Sherry would waste a question on such a ridiculous proposition. What the government has announced is a comprehensive approach to the demographics problem that has been identified as of significance to this country, to the economy and to our community going forward. We know that, with an ageing population and when we have longer life spans than previously, we are going to have to do more for our retirement. What the demographic package is designed to do is allow people to retire in a phased way. A lot of people do not want to suddenly reach their preservation age and retire. A lot of people want to work part time and take the advantage of being able to access their superannuation to supplement their earnings.

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber. I ask senators on both sides of the house to come to order.

Senator COONAN—The Australian government leads the world when it comes to looking at the problems of demographics and planning for the ageing of our population, and the release not only of the Intergenerational Report but also of the Treasurer’s package last week shows that this government has started to think about what we need to do now to be planning for our retirement. The release of Australia’s demographic challenges and a more flexible retirement income plan is the next step in the government’s development of policies that will respond to the ageing of our population. We know that Senator Sherry takes retirement seriously, and he has taken about eight years in a very leisurely fashion indeed to get to looking at what superannuation policies might actually benefit the economy and the community. I can understand that the Labor Party are a bit sensitive about these matters, because the government have put on the agenda some forward thinking in relation to superannuation. We are not bogged down in doing nothing but prescription, in tying everyone up in knots and tying up funds.

Senator Chris Evans—He refuses to retire.

The PRESIDENT—Order! Senator Evans, you have been continually interjecting during question time. I ask you to lower your voice.

Senator COONAN—I was saying that the government are not completely hide-bound by regulation. We actually have some creative ideas about superannuation and the retirement needs of this country. Not only are we not tied up in red tape and further prescription that does not allow anyone choice; we are all about flexibility in the work force and we are all about giving someone the choice to continue to work or to retire. There is absolutely no compulsion in the arrangements that were announced last week. People can still take a lump sum or choose to retire gradually. This is something that will actually address retirement needs. Not everyone is the same—everyone has different choices and different options—and that is exactly what the government mean when we say that we want a flexible workplace.
Senator SHERRY—Mr President, I ask a supplementary question. The minister did not answer the question about why the Treasurer is predicting that there is going to be no such thing as full-time retirement. Assistant Treasurer, why does the Liberal government want to sentence Australians to a lifetime of work without a deserved full-time retirement—in other words, work till you drop?

Senator COONAN—I know that Senator Sherry wants to put up his feet, and he might get a chance to do that sooner than he thinks. What we do know is that some people may not wish to retire. Not everyone is the same—some may wish to retire and some may not wish to retire. Some may wish to retire at the earliest opportunity, and they will still be able to do that and access their lump sum. In that respect, that option remains.

Trade: Free Trade Agreement

Senator RIDGEWAY (2.24 p.m.)—My question is to the Minister representing the Minister for Trade, Senator Hill. The government has stated that the economic analysis of Australia’s free trade agreement with the US will be put out to public tender to determine the net value of the deal. I ask the minister: what criteria will the contractor be instructed to use to assess the free trade agreement? While it is essential that thorough economic modelling be conducted to determine the economic net value of the deal, is the government proposing to address the other components of national interest that will be clearly affected by this deal, particularly social, cultural and environmental issues? Will the government give a guarantee that this analysis will follow a triple bottom line approach?

Senator HILL—As the honourable senator no doubt knows, trying to translate a triple bottom line approach into a dollar figure is a very difficult task indeed—one might say it is almost impossible—so there is not much point in providing terms of reference that predetermine that it will not produce a useful outcome. It is certainly possible to look at the trade deal in economic terms as well as in social and environmental terms, but I am not sure if it is possible in the way that the honourable senator is suggesting. I am sure that honourable senators are quite able to look at the social, cultural and environmental consequences, as there has already been significant debate on those issues. The government, for example, was particularly conscious of Australia’s cultural assets in this negotiation and effectively protected those assets.

In relation to the financial analysis, there was some discussion on that subject last night in the estimates committee. Senator Cook was putting his views on the challenge of economic modelling in this difficult area. I have not seen the terms of reference—I expect they will be made public when they are determined—but there certainly was some suggestion last night that there is an argument that they should follow a similar line to the terms of reference that were given to consultants earlier. That would assist those interested in this issue to evaluate outcomes from a common statistical basis.

Senator RIDGEWAY—Mr President, I ask a supplementary question. I thank the minister for his answer. I am not sure if he fully understood the question. Is the minister aware that, under US trade law, a thorough environmental impact analysis of any proposed trade agreement must be conducted before the agreement can be ratified? Isn’t it true that this is done to ensure—and I quote from a recent US Trade Representative document:

... policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative) ...
Will the government give a commitment to undertake an analysis of this kind from an Australian perspective and provide this to the parliament and to the Australian people so that we can understand exactly what the impacts of the free trade agreement will be? Will the documents put out as part of the public tender process also specify that there must be an analysis of the full impact of the free trade agreement from an economic, environmental and social perspective?

Senator HILL—I am aware of the US practice, and it is also the trend in Europe. What I said to the honourable senator is that it is very difficult to reduce those outcomes to dollar terms. The economic analysis which was earlier undertaken was obviously done on a different basis and did produce possible dollar outcomes. I do not know whether the process now being talked about by the minister will also include an economic and environmental assessment, but I will refer that to him to see whether he is going to have assessments of that type undertaken.

Superannuation: Preservation Age

Senator KIRK (2.29 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. I refer to the Treasurer’s many recent comments in the media about the current access age for superannuation. Can the Assistant Treasurer confirm that Mr Costello stated:

The superannuation preservation age is 55.

Is it correct that the superannuation access age, the preservation age, for Australians is 55 years?

Senator COONAN—As no doubt everyone in the chamber knows, the preservation age has been extended to 60. I have absolutely no doubt that the Treasurer would also know that. I cannot verify that any statement attributed to the Treasurer by those opposite would be accurate. The preservation age better reflects the fact that we are an ageing population and that we are going to live longer. Under the new flexible arrangements announced by the government last week, Australians are going to have options about how they wish to retire and how they wish to continue to work if they want to. In those circumstances there cannot be much doubt that this government takes very seriously the fact that the preservation age needs to be where it is. It will take a while to phase it in, of course. You cannot just bring in a change to the preservation age overnight. It does allow people to work longer and have better savings in retirement than they would have had with the earlier age.

It makes absolutely no sense with our current demographics and our current workplaces that everyone is stampeded down a chute to retire at age 55. It makes absolutely no sense at all, nor does it make any sense to expect every single person to retire—with consequences for their retirement savings—at a particular age. Obviously, there needs to be flexibility in the system. The government understand that not only do we live in a commutarian system, as Mr Latham described it recently, but we live in a situation where individual needs are recognised, individual options are recognised and there is flexibility so that those who wish to retire can do so at the preservation age and those who want to work part time can have greater options. We do not want to lose the skills of those who want to continue to work. Obviously, older workers have very valuable skills to contribute to the economy. From the tenor of the questions opposite there is some suggestion on the part of the Labor Party that that is a bad thing. We think it is a very good thing that people have choice not only in when they retire but also in where they put their retirement savings. In all those circumstances, retirement policy does impact on a lot of other policies, so it is not only a matter for individuals. It is a matter for government
and for the community to look more broadly at the cost pressures of an ageing demographic.

If the Labor Party was at all concerned about any of these matters, it would pass the disability support provisions that are in the Senate, it would pass the pharmaceutical benefit provisions that are held up in the Senate and it would get serious about the fact that we are an ageing population and we need to make some provision for our retirement.

Senator KIRK—Mr President, I ask a supplementary question. Minister, doesn’t the Treasurer know the existing law on superannuation access ages—the law that the Liberal government legislated to change from 30 June 1998? Doesn’t the Treasurer know that for the 9.5 million Australians who were born after 30 June 1964—that is, almost 52 per cent of the population; more than half of all Australians—the superannuation access age is 60 years? Why do the Howard government and Australia’s highest-taxing Treasurer continue to mislead the Australian people about this very important issue—the superannuation access age?

Senator COONAN—This government does not need a lecture on the preservation age. Mr Latham last week said that he supported this government’s package, including the existing arrangements for preservation. He needs to have a look at the people sitting opposite who appear to be on his side, because there is a very mixed message indeed. Mr Latham has said that he supports the government’s package on demographics, which includes a preservation age, and he should get around to informing his senators.

Tasmania: Air Services

Senator BROWN (2.35 p.m.)—My question is to Senator Campbell, representing the Minister for Transport and Regional Services. The government will be aware that from May, when Jetstar, the no-frills subsidiary of Qantas, effectively replaces Qantas services from Hobart, travellers going to every other destination linked beyond Melbourne are going to have the choice of either carrying their bags from Jetstar to Qantas and rebooking in Melbourne, with a 1½-hour delay minimum, or taking a 55-kilometre trip to Avalon to transfer to the on-flight? Does the minister know of any other state whose travellers are going to be so disadvantaged in flying beyond the next port of call in Australia? What is the government doing to turn around the enormous disadvantage that Tasmanian travellers are going to face with the introduction of this new service, compared with current flight scheduling and services for other travellers, including business travellers?

Senator IAN CAMPBELL—I thank Senator Brown for the question. At the outset I say that we welcome the launch of a new airline in Australia. We see it as a further maturing of the aviation marketplace. It is clearly a response by Qantas to the very vigorous and successful competitive pressure put into the domestic aviation market by Virgin Blue, which has been a tremendously successful start-up airline where so many have failed in the past. It does offer very strong competition at the lower end of the price marketplace. Senator Brown has raised some very important questions about passengers transiting through Tullamarine airport. I know he has a personal interest in that. That does not detract from the question at all. There are many other people who want to travel to Tasmania using Qantas services. I will seek a detailed response to the question from the Minister for Transport and Qantas services. I will also be happy to take it up with Qantas.

I note the announcement by Jetstar that it is planning to introduce passenger services using jets at Avalon airport and that it is con-
sidering other capital city secondary airports. One of the positive things about that is that it will not only increase competition in the airline industry but also produce more competition between airports. That, of course, is very good for consumers. It should help to drive prices down and to ensure that we have better competition on the ground as well as in the air. That is a welcome thing.

As far as the specific issue about transportation between Tullamarine and Avalon is concerned, and the alternative that Senator Brown mentioned in terms of getting off one flight and having to wait 1½ hours, they are matters that I will raise with the transport minister now that Senator Brown has raised them and, as I have said, I am happy to raise them with Qantas.

Senator BROWN—Mr President, I ask a supplementary question. I ask the minister, against interjections from the opposition, if he would also seek to clarify whether there is any other capital city that is going to have its Jetstar services going into Tullamarine so that to continue on Jetstar you need to go to Avalon or have a 1½-hour break, as against the 30-minute turnaround currently when flying on with Qantas. I ask the minister: will he particularly look at what is going to happen to the current staff at the airports in Hobart and Launceston and the facilities for disabled people travelling to and from Tasmania under this new system?

Senator IAN CAMPBELL—I am reminded that, at some capital cities, we do not have the benefit of the extra service offered by Jetstar at the moment. I am also reminded that there are other ports in Australia where people do have to get off and wait lengths of time to catch other aeroplanes. One of those is Perth. If you are travelling from Canberra to, say, Port Hedland, which is something that someone like the member for Kalgoorlie or Western Australian senators, mining executives or people working at the port of Port Hedland might do, it is quite possible that you would have to transit ports such as Melbourne, Adelaide and Perth. You might sit around in Perth for an hour or so, unload your bags and then go on to another service. You may choose the Skywest service. So it is not the only place where there is potential inconvenience. I have said that Senator Brown has raised a serious question. It is an important issue. Clearly, the government wants to deliver a successful aviation policy that builds in a great choice of domestic carriers in different price brackets for Australian travellers. (Time expired)

Superannuation: Reform

Senator SHERRY (2.40 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Will the government’s recently announced policy to allow Australians to access their superannuation below the age of 65 while working part time commence at 55 years of age or 60 years of age for the more than 50 per cent of all Australians who are born after 30 June 1964? What will the rules be for these 9½ million Australians?

Senator COONAN—I thank Senator Sherry for the question. I can understand how anxious Senator Sherry is to know all these details. It will no doubt fall to me to consult about those and to design and prescribe by way of regulations the specific detail fleshing out the broad framework for the policies announced by the Treasurer last week. Of course, the policy purpose behind the measure is to allow people some flexibility and to make contributions to their super at any time. That is a measure that, whilst it has not yet received all that much publicity, is likely to make some real difference to those who have broken work patterns and want to save for their retirement.
The measure to allow people to work part time and to access their super is very much designed to give people some choice and flexibility. There is not an element of compulsion in wanting to encourage greater work force participation. It is going to be something about which people will be able to make a choice. It is designed so that those who otherwise would be able to access their super can take it as a part-time stream and continue to work and supplement their earnings.

We understand that not only do employees need flexibility but employers need flexibility. There need to be constructive changes in the attitudes that employers have to keeping on older workers. So, in those circumstances, it is going to be a matter of employers recognising the skills of older employees and recognising that there can be real economies of scale if there can be some part-time employment that will enable the employee to supplement their superannuation. So the policy purpose and the design of it is that, instead of accessing their lump sum when they are entitled to access it, people may wish to continue to work and access part of their superannuation to enable them to continue not only to fulfil their personal aspirations but also to contribute their skills to the broader economy and the work force more generally.

Whilst all these specific rules are about to be announced and are very much to be consulted about, we do want to make sure that these benefits are well understood by the community and that we take into account various points of view. That is exactly what this government will do. We are a consultative government and these broad directions in policy will be bedded down in the rules very shortly.

Senator SHERRY—I will take that as a don’t know. Mr President, I ask a supplementary question. Isn’t this a very important detail, particularly since the Treasurer did not know he had increased the superannuation access age himself from age 55 to 60? Aren’t Australians, particularly when there are 9½ million Australians in this category, entitled to know well in advance what the rules on retirement are before you force them to work until they drop?

Senator COONAN—I know that this phrase ‘working until you drop’ will be a topic for discussion shortly after question time, but it contains a complete and utter misunderstanding of what this package is all about. Why would anybody be required to work until they dropped? Why is the Labor Party so afraid of a flexible policy that is going to give people some more choice in how they transition to retirement? These are significant and well thought through policies that will receive the support of the community—and the Labor Party have said that they support them.

Property: Commonwealth Leasing Arrangements

Senator HUMPHRIES (2.45 p.m.)—My question is to the Special Minister of State, Senator Abetz. Is the minister aware of press reports in today’s papers dealing with the lease of a building in the Canberra suburb of Barton to an Australian government agency? Does this lease represent value for money for the taxpayers of Australia? Is the minister aware of other leases in that same part of Canberra that do not represent value for money?

Senator ABETZ—I thank Senator Humphries for his question and acknowledge his outstanding interest in, and service to, the people of Canberra and the ACT. I can confirm that I have seen, in today’s Financial Review, an item that outlines the leasing costs of high-quality office space in Canberra. This space, of some 5,034 square metres, is currently being let to the Australian
Government Solicitor for a net rental—that is, excluding outgoings—of $290 per square metre. That is correct: $290 per square metre. I can assure Senator Humphries and the Australian taxpayers that this lease does represent value for money, given that the average market rate for office space in that area is around $290 to $340 per square metre.

Senator Kemp—What is the building?

Senator ABETZ—No, it is not Centenary House, but it is just around the corner from Centenary House. This building is ironically called the Lionel Murphy Building, named after the Labor hero—and I use that term very loosely. You can get premium space in the Lionel Murphy Building for the princely sum of $290 per square metre.

Senator Humphries also asks if I am aware of other Commonwealth leases which may not represent value for money. I can think of one and I am sure Mr Latham and the Labor Party can also think of one. That, of course, is the lease on Centenary House, which is a Labor rort of epic proportions. Let me just remind you of the facts: $290 per square metre in the Lionel Murphy Building; $871 per square metre in Labor owned Centenary House. That means that the Labor Party is forcing taxpayers to pay 300 per cent of market rates. Let me say that again: 300 per cent of market rates. If that is not a rort, nothing is.

All Mr Latham has to do is get on the phone and say, ‘Renegotiate the lease,’ and the rort can be ended today. To use Mr Latham’s current buzz phrase, he can bring the rent into line with ‘community standards’. I notice Mr Latham and Labor consider this to be a matter in the past. That is wrong. This is a matter for the future. It is true that over the past 11 years Labor has ripped off taxpayers to the tune of $18 million. But over the next four years, the rip-off will escalate to an extra $18 million. So this is not just an issue of the past; this is an issue for the future as well. I say to Mr Latham: in the tradition of the New South Wales right, do a Lionel Murphy: call your little mate and put in the fix. For once the fix would be honourable and in the public interest. I suggest, Mr Latham, that you call up your little mate, Mr Gartrell, get him to renegotiate the lease on Centenary House and stop this 300 per cent rental rort rip-off. This is a test of honesty and integrity for Mr Latham and Labor. As Mr Latham’s mentor, Gough Whitlam, would say, ‘It’s time.’ It’s time to right the wrong.

Senator HUMPHRIES—Mr President, I ask a supplementary question. There was a lot of noise. I do not think I could have heard those figures correctly. Did the minister say that the cost would be 300 per cent greater than market rents in other parts of Barton?

Senator Brown—Standing orders do not cover former members. Senator Humphries, were you asking a supplementary question?

Senator HUMPHRIES—I did.

Honourable senators interjecting—

The PRESIDENT—Senator Brown, standing orders do not cover former members. Senator Humphries, you asked a supplementary question?

Senator HUMPHRIES—I did. My question was: did I correctly hear the figures the minister was giving the chamber? Did he say that the figure for rent at Centenary House was something like 300 per cent greater than market rents elsewhere in Barton?
Senator ABETZ—Mr President, it was very difficult to hear the supplementary question over the din of the Australian Labor Party. I can understand their sensitivity—

The PRESIDENT—Senator, there is noise coming from your side of the chamber as well.

Senator ABETZ—because this is a most outrageous rort inflicted upon the Australian taxpayer by the Australian Labor Party. Mr Latham and the Labor Party could fix it. If they were genuinely heroes, Senator Brown, they would look after the people of Australia and the taxpayer, who will be funding the Australian Labor Party to a tune in excess of $36 million over the life of this lease above and beyond market value, which of course includes the profit margin as well. I can inform Senator Humphries, in case he did not hear, that 300 per cent of market value is what the Australian Labor Party are today charging the Australian taxpayer for property at Centenary House. That is a rort of epic proportions and it is to be condemned—and Mr Latham can fix it today. (Time expired)

Superannuation: Reform

Senator MACKAY (2.53 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the minister aware that the Treasurer stated on The Insiders last Sunday that:

People are saying: “I would like to work in my late 50s and my late 60s. What can you do for me?” And that is why we are now embarking on a huge educational campaign amongst employers about the value of the old worker.

Given that the Government Communications Unit denied all knowledge of an educational campaign for older workers in estimates only three weeks ago, perhaps the minister can inform the Senate of the nature of this, as Mr Costello described it, ‘huge educational campaign’, how much this huge educational campaign will cost and when this huge educational campaign will kick off.

Senator COONAN—I thank Senator Mackay for the question because it gives me the opportunity to say something further about the measures that the Treasurer announced last week, which will be enabling the transition from work to retirement when people reach their preservation age and can access part of their pension, whether it is at 55 or 60. Once again, there is flexibility built into the system that will enable people’s skills to be recognised beyond what might normally be regarded as their retirement age and will enable, of course, the attitudes of employers to be changed to accommodate them. This government already has a number of programs that assist older workers and that will assist further to enable employers to understand the value of their older workers. At present, as I said in answer to an earlier question, the problem is that everyone is fed down a chute when they reach their preservation age and most of them take it in a lump sum or in some income stream and they retire. The advantage of this system is that it gives employers the flexibility of retaining aged workers or people who have reached their preservation age. It gives employers the opportunity to be able to continue to utilise the skills of older workers instead of tossing them all out on the scrap heap.

Senator Mackay—I rise on a point of order. I want to draw the minister’s attention to the question, and that was with respect to the ‘huge educational campaign’ cited by Mr Costello. I repeat: how much will it cost, when will commence and what will be the nature of the campaign?

The PRESIDENT—I am sure that the minister will get to that part of the question. She still has two minutes to go in the answer.

Senator Chris Evans—What is the basis of that confidence?
The PRESIDENT—Senator Evans, if you and some of your colleagues would keep quiet, we might be able to hear an answer.

Senator COONAN—The important point about all this is that the demographic statement and the retirement income statement refer to the framework that we need to transition to to be able to look at providing more flexibility in the system—and that includes educating employers and employees as to the benefits that will flow not only to them personally but also to the broader economy if older workers’ skills are not jettisoned the minute they reach their preservation age and take their lump sum but continue to provide their skills to business. Quite obviously this is a novel approach, and employers and employees have to get used to the idea. What the Treasurer was referring to was the fact that the whole community needs to understand this new framework and needs to move to much more flexible attitudes towards work, to providing part-time employment and to utilising these new initiatives.

I can understand how the Labor Party are a bit narked about this, because they want a very regulated workplace—one where there is not too much movement in flexibility. They want to have absolute certainty and a system that is going to stitch this economy up in red tape and provide no flexibility. They have absolutely no plan for the future. This is old Labor; this is Labor looking backwards. This is the coalition, looking forward, with a plan for the future.

Senator MACKAY—Mr President, I ask a supplementary question. I ask the minister for the third time: what is the nature of this huge educational campaign cited by Mr Costello, how much will it cost—how much will the ads cost, for example—when will the huge educational campaign kick off, when will the government actually level with the Senate as to the nature and the cost of this campaign and, finally, what research has the government undertaken over the past year that shows employers do not value older workers, and can this research be tabled in the Senate?

Senator COONAN—Seeing that Senator Mackay is so exercised about what money is going to be put towards an education campaign, what I suggest is that the Labor Party divert some of the rivers of gold that are flowing from Centenary House. About $36 million would be a jolly good start.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Tasmania: Air Services

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (3.00 p.m.)—I was asked by Senator Brown during question time about Jetstar services to Tasmania. I add briefly to my response, and it does not detract from my undertakings to take the matter up further with Qantas and Jetstar management. Firstly, as Senator Brown would know, these are of course matters of commercial judgment by the managements. I have asked my department to contact Jetstar immediately and, as a priority, discuss these things. Could I also say, Mr President, that Mr Michael Ferguson, who I believe is the Liberal candidate for Bass at the forthcoming federal election, is hosting a public meeting in Launceston on Friday on this issue and, showing very good initiative and great prospects as a future member for Bass, he has succeeded in having both Jetstar and Qantas executives present at the meeting. If any residents of Launceston or anyone else is interested—and I am sure Senator Brown would be interested—in details about that meeting, I will make sure that they are given
to them. Senator Guy Barnett and the Tasmanian Liberal Senate team also have details of the meeting. I congratulate Michael Ferguson, the Liberal candidate for Bass, on his initiative.

Senator Robert Ray—Mr President, I rise on a point of order. Isn’t it time to intervene? It really is a privilege given to ministers to answer questions after question time, not to give an ad for the local Liberal Party candidate in Launceston and the Liberal Party Senate team. It is a total abuse of procedure. You often lecture us in this place, quite correctly, about our misbehaviour. It is provoked by the behaviour of ministers, as we have just seen today.

The PRESIDENT—Senator Campbell, have you finished?

Senator Ian Campbell—Yes.

The PRESIDENT—In future when you wish to further explain answers you should perhaps be more succinct and perhaps not use it for a political purpose as you did today.

Environment: Water Management

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.02 p.m.)—Yesterday in the Senate, Senator Lees asked a question of me, representing Mr Truss, on the administration of environmental water and groundwater in the Murray-Darling Basin. I have a response for Senator Lees. I seek leave to have it incorporated in Hansard.

Leave granted.

The document read as follows—

Yesterday in the Senate, Senator Lees, asked me a question as the Minister representing the Minister for Agriculture, Fisheries and Forestry and the Minister for the Environment and Heritage concerning the administration of environmental water and groundwater in the Murray Darling Basin.

All jurisdictions within the Murray Darling Basin are responsible for providing environmental water, identified in the various water sharing plans and have done so as a result of their commitments to the COAL water reforms.

These jurisdictions are also committed to meet the specific objectives and outcomes for the significant ecological assets as set by the Ministerial Council. A River Murray Environmental Manager was established in 2001 and will report on these environmental objectives.

Within the Murray Darling Basin, examples of water that has been directed to environmental outcomes include:

- addition of environmental water (341 GL) to the flood in the Barmah-Millewa Forest in spring 2000 to support a water bird breeding event with some species recorded in that case that had not been seen for 25 years;
- manipulation of flow into South Australia in late 2000 to increase the area of the Chowilla Floodplain that was inundated;
- between September and October 2003, approximately 290GL flowed through the barrages in South Australia for the first time since December 2001 and helped reduce salinity in the Goolwa Passage and the Coorong;
- this week a floodplain watering trial will commence on the Chowilla floodplain to pump water onto the drought stressed floodplain to reach river red gums.

In relation to the Senator’s question regarding borrowings, all states have arrangements for management of environmental water and flows, these may include:

- flexible arrangements that allow water to temporarily borrowed from an environmental account when the water is not required and allow for repayment in later years;
- community trust depends on transparency in these arrangements. The environmental water account for the Living Murray will provide transparency for the Basin. Under the National Water Initiative all jurisdictions will establish a robust, transparent regulatory water accounting framework that protects the
integrity of entitlements including those for the environment;
- further flexibility in the management of environmental water is part of the National Water Initiative. For example, environmental water could be purchased in a cost effective manner when needed and sold or leased back to other water users at other times.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Superannuation: Reform

Senator SHERRY (Tasmania) (3.03 p.m.)—I move:
That the Senate take note of the answers given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to questions without notice asked by Senators Sherry, Kirk and Mackay today relating to superannuation and retirement income.

Today in the Senate, even by Senator Coonan’s standards, there was a pretty poor effort to attempt to answer what were quite reasonable questions posed by Labor senators with respect to the announcements last week by the Treasurer, Mr Costello, about the future of Australia’s retirement income system. Senator Coonan referred to ‘old Labor’. We know what the ‘new’ Liberal Party is all about: work till you drop, work longer till you drop. The question I posed to Senator Coonan was: what did the Treasurer mean when he said on ABC radio that there is going to be no such thing as full-time retirement? I asked quite clearly: what does the Treasurer mean when he is outlining new Liberal Party policy and says, ‘There’s going to be no such thing as full-time retirement’? Of course the Assistant Treasurer, Senator Coonan, on behalf of the Liberal Party, could not explain what the implications of this new approach by the new Liberal Party to retirement income means.

I think Australians know very well what the Liberal Party have in mind for Australians in retirement: no retirement. How else can you interpret the comments by the Treasurer that there is going to be no such thing as full-time retirement? Last week we had the Treasurer and the Prime Minister outlining the new retirement income approach and the basic theme, over and over again, was that Australians should work longer and longer and longer—Australians should work until they drop. That is the Liberal Party’s solution to the so-called ageing crisis that they allege faces Australia in respect of retirement incomes.

My colleague Senator Mackay asked about the massive education campaign that the Treasurer referred to on the ABC’s Insiders which is apparently going to be conducted to educate Australians, particularly workers and employers. Here we have the situation where the new Liberal Party policy of work until you drop is going to be funded by a massive public education campaign to convince people of the likes of truck drivers, shearsers and mine workers and a whole group of other workers in our society that they should work until they drop, that there should be no full-time retirement and that they should keep on working and working until the day they die. That is what that education campaign is going to be all about. I wish them good luck with it. If the Liberal Party believe that this is in the interests of, and fair for, Australians who have battled away, worked throughout their working lives, paid their taxes for their pension and saved through superannuation—and if the Liberal Party believe that they can convince Australian workers that they should work until the day they are dead—then I wish them good luck with it. But it is not a fair and reasonable approach to retirement incomes to, as the Treasurer laid out last week, effectively force Australian workers to do this. It is not fair; it is not reasonable.

The reality is that most Australians—not all, but most—look forward to retirement. They look forward to full-time retirement,
which the Treasurer says is going to be scrapped—no more full-time retirement. The majority of Australians look forward to full-time retirement so that they can relax, go on a caravan trip, play golf, spend some time in the community and spend some time with their families. Look at the comments of Mr Howard and Mr Costello last week: retired Australians should not be out there playing golf, they should not be out in their caravan and they should not spend time with their families. This is the new hardline Liberal Party: work longer and longer—work until you drop. The Labor Party is very happy to promote the new Liberal Party policy that was announced last week. We are very happy because we see the Liberal Party at its worst: solving the alleged funding problems with respect to retirement incomes by making sure that Australians do not collect the age pension because they will die before they collect it.

Senator FERGUSON (South Australia) (3.08 p.m.)—What a little rant and rave. And what a contrast to the Labor Party policy, which is: work as little as possible for as short a time as possible for the highest salary you can possibly get during that working period and spend more of your life in retirement, not working, than you ever spent in the work force. That is the policy of the Labor Party. I notice that Senator Sherry is very quick to leave and I also notice the matter of public importance that is on the Notice Paper for later today. Senator Sherry once had a superannuation policy. It was announced in a blaze of glory prior to Christmas. It has been ditched. There is now going to be a new superannuation policy. It only took eight years to develop the first one!

The Australian government has realised that, with the ageing of the population, we have to look at new superannuation and retirement incomes policy. In the days when life expectancy was around 65 or 66 for men and a little older for women, people only expected to spend a short period of time in retirement because their life expectancy was so much shorter. All that has changed. We all know that. With the health of modern-day Australians and better medical treatments and other sorts of things, life expectancy has increased by 15 or 20 years. Does that mean that the Labor Party now believes that people can spend less of their lives usefully employed in work than they will in retirement at the end of that working period?

What a ridiculous suggestion to put in front of the Australian people: that you should perhaps spend 30 years in work and more than 30 years in retirement where you are relying, wholly and solely in some cases, on future Australian taxpayers to fund that retirement—a base of taxpayers which we all know is declining. Consider the burden that you will place on future Australian taxpayers if you do not allow people to stay longer in the work force to provide for their own retirement. If you do not allow people to get the satisfaction out of life that they get out of working longer, you will put an intolerable burden on the future taxpayers of Australia. It is about time that people like Senator Sherry came up with some alternative way of making sure that longer living Australians can afford a retirement.

Senator Watson—What about the bipartisan approach?

Senator FERGUSON—There always was a bipartisan approach to many of these issues, as my colleague Senator Watson reminds me. The opposition are currently very proudly saying that they introduced compulsory super. They also started taxing it, of course. Who put the taxes on our current superannuation policy, all bar one tax? They were all put on by the Labor Party. That is what they think of allowing people to save for their own retirement. Instead of that we
have Senator Sherry coming into this place with his ridiculous notions. He attacked the Treasurer because, in making his statement last week, the Treasurer realised that something had to be done to counter the fact that, because we are living so much longer, there will be far more time spent in retirement or semiretirement than ever was the case a generation ago. My father retired from work and died three years later. That was often the case—he died at the age of 67, incidentally—but that was before modern medicine was able to find the reasons for many premature deaths.

If the Labor Party are genuine about looking after Australians in retirement, they will not come in here and say, ‘We don’t want people to work longer. We don’t want people to work till they drop’—which is the most ridiculous statement that Senator Sherry has made. I see that it is also the subject of the MPI. Senator Sherry’s policy—and, I presume, the policy of the Labor Party—is: work for as short a time as possible, get the highest salary you can possibly get in that short time and retire. Then, if you cannot provide for your own retirement, place your burden on the future taxpayers of Australia—those taxpayers who will become fewer and fewer in proportion to the people who are retired, so that we will have a situation where no provision is made for ageing Australia. Senator Sherry wants to take another look at his own superannuation policy. I know he is doing that because the one that he brought out last November has already been ditched under the new regime, and so we will have another policy now. I hope the Labor Party can develop, without spending a further eight years, a policy on looking after ageing Australia and the needs of the members of that ageing Australia as they move towards retirement. We know that, by allowing people to work longer, they will be able to make provision for themselves. (Time expired)

Senator KIRK (South Australia) (3.13 p.m.)—I also rise to speak on the motion to take note of answers given by Senator Coonan in question time today in relation to superannuation. As we heard here in question time today, it is clear that the government wants to have Australians work longer and longer—to work until they drop. During the course of questioning, reference was made by me to recent comments in the media by the Treasurer, Mr Costello, on current access ages to superannuation. I asked Senator Coonan whether she could confirm that Mr Costello had stated, ‘The superannuation preservation age is 55 years.’ In making that statement Mr Costello was, quite simply, wrong. He has been misleading Australians about the preservation age. Senator Coonan in fact confirmed this. She confirmed that the preservation age is 60 for 52 per cent of Australian people—those born after 1964.

This age is important. It is the age at which Australians either are forced to retire because their employer has retrenched them or voluntarily retire early. So it is very important that it is made clear to Australians exactly what the preservation age is for their age group. Mr Costello should know the super access ages because, after all, it was the Liberal government that legislated in 1998 to give effect to this scheme. We have to ask ourselves: why is Mr Costello misleading Australians in relation to this very important matter of access ages for superannuation? It seems that the reason the Treasurer is doing this is to create a false picture of some sort of retirement incomes crisis that he is trying to put across to the Australian electorate.

There seems to be some attempt to impose a radical ‘work until you drop’ solution on the Australian people, as we heard today. This is reinforced by the comments made by
the Treasurer that Senator Sherry referred to. He made these comments on ABC radio late last month. He said that there is going to be no such thing as full-time retirement. What does this mean for Australians who are approaching retirement age? We have to wonder why the government wants to sentence Australians to a lifetime of work without a well-deserved full-time retirement—to work until they drop. Why is it that the government wants to deny Australians who have worked for years the right due to them—that is, a full-time retirement? We should also ask the Assistant Treasurer whether, as part of this initiative of working until you drop, the Treasurer or the Assistant Treasurer will be encouraging the Prime Minister to forgo his right of retirement and perhaps work until he drops.

Some comments were made by Senator Ferguson in relation to Labor’s policy on this matter. Labor has recognised that the real challenges that are before us today in relation to superannuation reform are four key things: simplicity, safety, adequacy and taxation. I am pleased to say that, in the policy announcement Mr Latham will be making shortly on behalf of the Labor opposition, these matters will be addressed. Labor policy will address these matters that are so critical to the future of Australians who will be retiring in the next few years. It is a very important package and something that we will be proud to release to the community.

Senator WATSON (Tasmania) (3.18 p.m.)—Mr Costello, on behalf of the Liberal and National Party coalition, has provided a framework whereby Australians will enjoy much more flexibility and choice when they retire. I think it is unfortunate that the opposition is engaging in cheap, inaccurate headline hunting with the line ‘work till you drop’. How misleading. How inaccurate. It is a complete lie. Clearly Senator Sherry is ignoring the changing demography of Australia.

Much has been made of a statement by the Treasurer in relation to the preservation age. I say to the opposition: when the Treasurer was referring to preservation age he was referring to the great majority of Australians—that is, those born before 1 July 1960—for whom the preservation age is 55. When you are giving a framework speech, it is hardly necessary to give a whole lot of incidental statistics relating to different phases. For example, we know that for those born before 1960 the preservation age is 55. Then there is a progression to 56, 57, 58 and 59. For those born after 30 June 1964, it becomes 60 years. So I say to the opposition: your point means nothing because all Mr Costello was doing was providing a framework for the bulk of Australians.

What is really needed is recognition of the fact that the government are leading the world in planning for the ageing of our population. Our problem is not nearly as acute as those faced by some other Western societies. At least our government have the foresight to be planning for this. We are already recognised as having one of the finest models in the world in terms of our ageing population. What we are trying to do is improve the capacity of individuals to work—to provide better incentives to work, including flexibility in the workplace. We are not making it mandatory, like the Labor Party is; what we are about is providing flexibility, providing choice and providing new opportunities for people. Here we have a flexible, adaptable retirement income system which recognises the very important role that older workers have in achieving improved economic growth. Don’t you on the other side undermine the importance of older Australians to Australian society in terms of wisdom and economic contribution. This is what you are doing. You are demeaning the role of older
people who have the opportunity, if they wish, to continue in the work force. We are providing that opportunity; you are denying it. Do not do that, because that is not what Australians want in the future and that is not the way forward for Australian prosperity.

Our package contains a number of very important objectives. It recognises that the superannuation system itself needs to be flexible. The important thing is—and this is something that Senator Sherry has forgotten—that most of these initiatives have actually been taken from Senate select committee reports on superannuation over the last few years. This has been one of our focuses. This is one of the things that, as Senator Buckland knows, we figure is important. Senator Buckland has made an important contribution to this debate on older people, as a senator from South Australia. He recognises its importance. Stop playing politics. This is important. It is about making people’s lives in retirement more useful so that they can enjoy higher standards of living. What we are interested in is maintaining the integrity and sustainability of the retirement income system. That is important. It is important to reduce red tape and to take away the roadblocks so that people, if they wish, can continue in part-time work, because part-time work is a very important measure in moving towards final retirement. The demographics of Australian society are such that businesses will be looking to older employees because we just do not have the birth rate to meet the job opportunities that are going to be out there in the future. *(Time expired)*

Senator BUCKLAND (South Australia) *(3.23 p.m.)*—I also rise to take note of answers given by Senator Coonan to questions today. I have to say at the outset that the only person I know who actually wants to work until they drop is the Prime Minister. My understanding is that quite a few who sit behind him do not want him to work till he drops—they want him gone now. This government has a great belief in workers going until the day they drop. It has no thought at all for people in their older years enjoying some leisure after putting in a lifetime of work. It surprised me that when Senator Ferguson was speaking he did not come up with the idea that we would give up weekends so we can do more. It was a pathetic performance. I have got to say, Senator Watson, some of the comments you made were plainly wrong. You did not take account of what was being said. At no time during the select committee did anyone from our side—and, I do not believe, from your side either—suggest that we go until the day we drop. There is no way that we suggested that at all.

Many Australians are forced into early retirement by their employers restructuring the industry, closing down, selling off or diversifying. What protection is there for them by this government? None at all. They are the things you want to start dealing with, not these things that will mean that workers will not be able to stop working because they will not be able to afford to and because you will give them absolutely no opportunity whatsoever.

*Honourable senators interjecting—*

**The DEPUTY PRESIDENT**—Order! Senator Buckland, resume your seat. Senator Faulkner and Senator Hill, you might cut out of the debate. It is very hard to hear Senator Buckland.

**Senator BUCKLAND**—Thank you, Mr Deputy President. Let us look at some of those people that the government is suggesting ought to work until they cannot work any longer, until the day they die—that is the plan of this government. What about shearers? What about steelworkers? What about people who work in factories and mines? Those people look forward to the day that they can stop work.
You talk about flexibility and you talk about them doing part-time work, casual work or whatever is in your grand plan. What about putting some of that effort into training our young people to take these jobs? We have huge unemployment problems, with no thought by this government to address that issue—and now you are suggesting that older workers keep going because you will not realistically look at the problem that is confronting you. You will not address the needs of Australian working people and Australian industry. ‘Just take an easy, simple way out,’ is the answer that this government makes.

Do you think workers who drive trucks for a large proportion of their lives want to continue driving trucks across the face of Australia all the time? The driving they want to do when they get to an age when they can retire is getting into their car with a caravan on the back. They do not want to be driving trucks until the day they drop dead—not do steelworkers, nor do miners. They want some time of leisure. After a lifetime of work, they want to spend proper quality time with their family. This ‘work until you drop’ plan is a pathetic view put up by the Treasurer.

Only a few days ago in America the annual Razzie awards were held. What do they give? They give great raspberries. After listening to Senator Coonan’s answers today and listening to what your Treasurer had to tell us last week, I say they get the raspberry for putting up an absolutely hypocritical proposal to Australia.

Senator Ferris interjecting—

Senator BUCKLAND—Go out there, Senator Ferris—you have got a lot to say—and start asking people, like I did last week on the Yorke Peninsula. They would like work as well. They are 50 years old and they cannot get work because this government has structured the work force and industry in such a way that nothing is there. You have no care for them whatsoever. (Time expired)

Question agreed to.

The DEPUTY PRESIDENT—I would just like to give some advice to Senator Ferris. Senator Ferris, if you want to participate in the debate, please put your name on the list. There is a tolerance level for my ear-drums above which I just cannot tolerate certain noises. I do not mind interjections; I accept interjections. But if you want to participate in the debate please put your name on the list.

Trade: Free Trade Agreement

Senator RIDGEWAY (New South Wales) (3.29 p.m.)—I move:

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

A number of issues need to be raised as a result of the answer given by the government. The government has spent the last fortnight loudly proclaiming the benefits of this historic deal. This is interesting for a couple of reasons—first, most government members have not read it and, second, even those who have read it cannot be sure of the precise nature or extent of the benefits Australia will receive as a result of the free trade agreement.
Two separate econometric studies have been conducted to date into the potential impacts of this free trade agreement. DFAT commissioned a report by the APEC Study Centre which was based on a study conducted by the consultants at the Centre for Independent Economics. The report estimated that the Australian economy would experience growth in GDP of 0.4 per cent, or approximately $4 billion, after 10 years if all trade barriers, including agriculture, were removed through the free trade agreement. The report admitted that this would be very unlikely and that the gains were likely to be far less. It also assumed growth in productivity in service industries from US investment and competition, which could mean lower employment standards and further privatisation.

ACIL also produced a report and did some econometric modelling. Its report was commissioned by the Rural Industries Research and Development Corporation. The results in ACIL’s report are somewhat different to those of the CIE report. ACIL confirmed that the removal of all trade barriers was unlikely and estimated that as a result of the free trade agreement being signed with the United States there would be a reduction in welfare gain to Australia of 0.02 per cent of GDP. The ACIL report also criticised CIE’s assumption of service industry growth and noted the impact of the possible loss of trade to Asia-Pacific countries, which currently take 55 per cent of our exports. This potential ‘trade diversion effect’, as ACIL describes it, has also been confirmed by the Productivity Commission. A report on 18 bilateral trade agreements conducted over the last 40 years concluded that 12 had suffered reduced exports because of trade diversion from other trading partners.

Both of these studies had limitations in their modelling. As with any exercise involving the making of assumptions, the results are less than perfect. But the main point is that clear answers about the economic advantage of pursuing a free trade agreement are hard to find. This raises questions about the government’s rhetoric in the past two weeks regarding the net benefits to Australia of the free trade agreement. Economic modelling is not an exact science. But, now that the deal has been done, we still have not seen the detail. The minister promised that it would be released last Friday. He promised again that it would be released on Monday, then he promised that it would be released on Tuesday. We are now at Wednesday and it is still not available. Perhaps by Thursday of this week some of those details might come forth.

It is imperative that as part of the process we analyse the documents thoroughly so that we understand the impact this agreement will have on Australia. It is also important to keep in mind that the national interest is much more than mere economics. Analysis of the terms of agreement should look at the net benefit of the agreement by taking a triple bottom line approach and assessing the impact in economic, social—and I emphasise cultural, in that respect—and environmental terms. The government may try to assure us that there are no surprises, but we will have to look at the details.

I mentioned in my supplementary question the interim report provided to the US Congress by the US Trade Representative. US trade laws require the production of reports with regard to the environment. Interestingly, the interim report says that the US wants to seek an appropriate commitment by Australia regarding the effective enforcement of its environmental laws. It seems to me that, if nothing else, if that is the expectation the Americans have of Australia, there is an obligation on our government to ensure that tender documents are written in such a way
as to analyse the economic, social and cultural impacts. (Time expired)
Question agreed to.

COMMITTEES
Selection of Bills Committee
Report
Senator FERRIS (South Australia) (3.35 p.m.)—I present the 2nd report of 2004 of the Selection of Bills Committee.
Ordered that the report be adopted.
Senator FERRIS—I seek leave to have the report incorporated in Hansard.
Leave granted.
The report read as follows—
SELECTION OF BILLS COMMITTEE
REPORT NO. 2 OF 2004
1. The committee met on Tuesday, 2 March 2004.
2. The committee resolved to recommend—
(a) the Taxation Laws (Clearing and Settlement Facility Support) Bill 2003 be referred immediately to the Economics Legislation Committee for inquiry and report on 29 March 2004 (see appendix 1 for statement of reasons for referral);
(b) the provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004 be referred immediately to the Economics Legislation Committee for inquiry and report on a date to be determined after consulting the committee (see appendix 2 for statement of reasons for referral);
(c) the provisions of the Workplace Relations Amendment (Award Simplification) Bill 2002 and the Workplace Relations Amendment (Better Bargaining) Bill 2003, the Workplace Relations Amendment (Choice in Award Coverage) Bill 2004 and the Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004 be referred immediately to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report on 17 June 2004 (see appendices 3 - 6 for statements of reasons for referral);
(d) the provisions of the Telecommunications (Interception) Amendment Bill 2004 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report on 30 March 2004 (see appendix 7 for statement of reasons for referral); and
(e) the following bills not be referred to committees:
• A New Tax System (Commonwealth-State Financial Arrangements) Amendment Bill 2003
• Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004
• Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Bill 2004
• Australian Crime Commission Amendment Bill 2003 [2004]
• Australian Sports Drug Agency Amendment Bill 2004
• Customs Tariff Amendment (Paraquat Dichloride) Bill 2004
• Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2004
• Great Barrier Reef Marine Park Amendment Bill 2004
• House of Representatives (Northern Territory Representation) Bill 2004
• International Transfer of Prisoners Amendment Bill 2004
• Medical Indemnity Amendment Bill 2004
• Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2004
• Migration Amendment (Duration of Detention) Bill 2004
• Norfolk Island Amendment Bill 2003 [2004]
Wednesday, 3 March 2004

SENATE

• Taxation Laws Amendment Bill (No. 9) 2003

*The committee recommends accordingly*

3. The committee **deferred** consideration of the following bills to the next meeting:

- **Bill deferred from meeting of 12 August 2003**
  - Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003
- **Bill deferred from meeting of 28 October 2003**
  - Intelligence Services Amendment Bill 2003
- **Bills deferred from meeting of 10 February 2004**
  - Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003
  - Corporations (Fees) Amendment Bill (No. 2) 2003
  - New International Tax Arrangements Bill 2003
  - Racial and Religious Hatred Bill 2003 [No. 2]
- **Bills deferred from meeting of 2 March 2004**
  - Extension of Sunset of Parliamentary Joint Committee on Native Title Bill 2004
  - Tax Laws Amendment (2004 Measures No. 1) Bill 2004
  - Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004.

(Johnnie Ferris)

Chair

3 March 2004

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Appendix 1

Proposal to refer a bill to a committee

**Name of bill(s):** Taxation Laws (Clearing and Settlement Facility Support) Bill 2003

**Reasons for referral/principal issues for consideration**

Consideration of bill and related matters

**Possible submissions or evidence from:** ASX, Treasury and others to be advised

**Committee to which bill is referred:** Economics Legislation Committee

**Possible hearing date:** Anytime in the week beginning 22 March 2004

**Possible reporting date:** Anytime in the week beginning 29 March 2004

Senator Sue Mackay

Whip/Selection of Bills Committee Member

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Appendix 2

Proposal to refer a bill to a committee

**Name of bill(s):** Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004

**Reasons for referral/principal issues for consideration**

To investigate the impact of the proposed changes to the TCF Strategic Program on the TCF industry, specifically leather and technical textiles, and the adequacy of support measures.

**Possible submissions or evidence from:** Textiles, Clothing and Footwear Union of Australia

Council of Textile and Fashion Industries of Australia

Australian Association of Leather Industries

Australian Industry Group

**Committee to which bill is referred:** Economics Legislation Committee

**Possible hearing date:**

**Possible reporting date(s):** as soon as practicable

Senator Lyn Allison

Whip/Selection of Bills Committee Member

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Appendix 3

Proposal to refer a bill to a committee

**Name of bill(s):** Workplace Relations Amendment (Award Simplification) Bill 2002

**Reasons for referral/principal issues for consideration**

Effect of reducing award safety net

Importance of award safety net

CHAMBER
Process involved in further award simplification including resources required
Effect of removing federal award provisions and reverting to relying on state laws
Possible submissions or evidence from:
ACCI, ACTU, AIG, state labour councils
Committee to which bill is referred:
Employment, Workplace Relations, and Education Legislation Committee
Possible hearing date: 3-4 May 2004
Possible reporting date(s): 17 June 2004
Senator Sue Mackay
Whip/Selection of Bills Committee Member

Appendix 4
Proposal to refer a bill to a committee
Name of bill(s):
Workplace Relations Amendment (Better Bargaining) Bill 2003
Reasons for referral/principal issues for consideration
Effect on bargaining capacity of employees and unions
Effect on capacity of AIRC to assist parties to settle disputes
Particular effect on caring professions named in the minister’s second reading speech
Effect on capacity of negotiating parties to decide the appropriate parameters of their bargaining
Possible submissions or evidence from:
ACCI, ACTU, AIG, state labour councils
Committee to which bill is referred:
Employment, Workplace Relations, and Education Legislation Committee
Possible hearing date: 3-4 May 2004
Possible reporting date(s): 17 June 2004
Senator Sue Mackay
Whip/Selection of Bills Committee Member

Appendix 6
Proposal to refer a bill to a committee
Name of bill(s):
Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004
Reasons for referral/principal issues for consideration
Why a party to an agreement should not be involved in its variation
Practical implications of AWAs operating from the time of signing, particularly if the AWA is not approved
Current processes for agreement approval and any evidence of problems with these processes
Possible submissions or evidence from:
ACCI, ACTU, AIG, state labour councils
Committee to which bill is referred:
Employment, Workplace Relations, and Education Legislation Committee
Possible hearing date: 3-4 May 2004
Possible reporting date(s): 17 June 2004
Senator Sue Mackay  
Whip/Selection of Bills Committee Member

Appendix 7
Proposal to refer a bill to a committee
Name of bill(s):
Telecommunications (Interception) Amendment Bill 2004
Reasons for referral/principal issues for consideration
The appropriateness of the changes to the telecommunications interception regime proposed in the bill and whether previous concerns of the Senate Legal and Constitutional Legislation Committee have been addressed
Possible submissions or evidence from:
AFP, ASIO, AFPA, Attorney-General’s Department
Committee to which bill is referred:
Legal and Constitutional Legislation Committee
Possible hearing date:
Possible reporting date(s):
30 March 2004
Senator Sue Mackay  
Whip/Selection of Bills Committee Member

NOTICES
Presentation
Senator Faulkner and Senator Bartlett to move on the next day of sitting:
(1) That the resolution of appointment of the Joint Standing Committee on Electoral Matters, be varied by omitting in paragraph (2) “1 Senator to be nominated by the Leader of the Opposition in the Senate and 2 Senators to be nominated by any minority group” and substituting “2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group”.
(2) A message be forwarded to the House of Representatives seeking the concurrence of the House in this variation to the resolution of appointment.

Senator Cherry to move on the next day of sitting:
That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 10 March 2004, from 11.30 am to 2 pm, to take evidence for the committee’s inquiry into competition in broadband services.

Senator Heffernan to move on the next day of sitting:
That the time for the presentation of reports of the Rural and Regional Affairs and Transport Legislation Committee be extended as follows:
(a) administration of the Civil Aviation Safety Authority—to 5 August 2004; and
(b) administration of AusSAR in relation to the search for the Margaret J—to 27 May 2004.

Senator George Campbell to move on the next day of sitting:
That the Senate—
(a) condemns the Liberal Government for the underlying thrust of its recently-announced retirement incomes measures, that Australians should forget full-time retirement and work longer and longer—in reality, work until they drop;
(b) while acknowledging that the Government’s announced policies may be of value to some retirees, considers that they must be implemented with a guarantee that:
(i) current access ages for superannuation, 55 for those born before 1 July 1960, phasing up to a retirement age of 60 for those born after 30 June 1964,
(ii) current eligibility ages for the age pension of 62 and 65 years, and
(iii) indexation of the age pension to Male Total Average Weekly Earnings, shall be maintained;
(c) notes that:
(i) Australia does not face a retirement incomes ‘crisis’ resulting from the
ageing of the population, because of the efficiency and effectiveness of the combined operation of the age pension and the 9 per cent superannuation guarantee contribution, and

(ii) there is active discrimination occurring in the workforce against those aged 40 and over who are seeking meaningful full-time employment and for whom retirement is the only option; and

(d) is of the opinion that:

(i) all Australians are entitled to retire at a time of their choosing to enjoy rest, recreation, community activity and family, at their leisure, and

(ii) for many Australians, it is impractical to expect them to work beyond the current retirement ages because they will not be able to find either full- or part-time work, or the nature of their employment involves a mandatory retirement age or is of such a physically and mentally stressful nature that employment beyond the current retirement age is not possible.

Senator Allison and Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) 27 February 2004 was Saharawi National Day and the 28th anniversary of the proclamation of the Saharawi republic,

(ii) on 30 January 2004, the United Nations (UN) Security Council extended by 3 months the mandate of the UN mission for Western Sahara, giving Morocco more time to respond to the latest peace plan for Western Sahara,

(iii) it is now 13 years since the original peace plan was signed,

(iv) Morocco has now accepted a United Nations High Commissioner for Refugees-sponsored exchange of family visits for Saharawis separated by war, occupation and the 2,720 km long military rampart erected by Morocco, and

(v) a delegation of 11 Australians will join the international march to the ‘Wall of Shame’ in April 2004 and will visit the 175,000 Saharawis in refugee camps in Algeria; and

(b) urges the Government to:

(i) congratulate Morocco for agreeing to the exchange of family visits,

(ii) use its best efforts to persuade Morocco to sign the latest UN peace plan that is based on the organisation of a referendum of self-determination in Western Sahara, and

(iii) provide humanitarian assistance to the Saharawi refugees who need food and medicine urgently.

Postponement

An item of business was postponed as follows:

General business notice of motion no. 773 standing in the name of Senator Nettle for today, relating to the socio-economic status funding system, postponed till 4 March 2004.

Withdrawal

Senator ALLISON (Victoria) (3.35 p.m.)—At the request of Senator Cherry, I withdraw business of the Senate notice of motion No. 1, relating to reference of a matter to the Rural and Regional Affairs and Transport Legislation Committee, Draft import risk assessment for Filipino bananas.

INVASION OF IRAQ ROYAL COMMISSION (RESTORING PUBLIC TRUST IN GOVERNMENT) BILL 2004 [No. 2]

First Reading

Senator BROWN (Tasmania) (3.37 p.m.)—I move:

That the following bill be introduced: A Bill for an Act to provide for the appointment of a Royal Commission to investigate the accuracy, independence and use of intelligence information
that contributed to the decision to invade Iraq in 2003, and for related purposes

Question agreed to.

Senator BROWN (Tasmania) (3.37 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BROWN (Tasmania) (3.37 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

INVASION OF IRAQ ROYAL COMMISSION (RESTORING PUBLIC TRUST IN GOVERNMENT) BILL 2004 [NO. 2]

Never before 2003, in Australia's history, has a Prime Minister sent our defence forces to war on the basis of wrong information. So serious was the failure of intelligence and/or misuse by government of intelligence information leading up to the invasion of Iraq in 2003 that a Royal Commission of inquiry is warranted.

The report of the Parliamentary Joint Committee on ASIO, ASIS and DSD into intelligence on Iraq’s weapons of mass destruction, tabled on 1 March 2004, has not answered the questions as to how or why our nation was misinformed in the lead up to the war. Its report raised new questions. The conclusion that a retired intelligence agent should inquire further into intelligence agencies is unsatisfactory—such an inquiry would be unlikely to either appear independent or be independent. A judicial inquiry with the power to subpoena people and papers—including from both government and the intelligence agencies—is necessary.

The inquiry should be thorough. However, there is provision in this bill for an interim report to be published should an election intervene on its proceedings.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

EUTHANASIA LAWS (REPEAL) BILL 2004

First Reading

Senator ALLISON (Victoria) (3.38 p.m.)—I move:

That the following bill be introduced: A Bill for an Act to repeal the Euthanasia Laws Act 1997, and for related purposes

Question agreed to.

Senator ALLISON (Victoria) (3.38 p.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ALLISON (Victoria) (3.38 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

EUTHANASIA LAWS (REPEAL) BILL 2004

The purpose of this bill is to repeal the Euthanasia Laws Act 1997 which removed the right of the people of the ACT, the Northern Territory and Norfolk Island to legislate for the terminally ill.

The Rights of the Terminally Ill Act 1995 was passed in the Northern Territory Parliament on 25th May 1996 and came into law on 1st July 1996.

The Act was designed to “confirm the right of a terminally ill person to request assistance from a medically qualified person to voluntarily terminate his or her life in a humane manner; to allow for such assistance to be given in certain circumstances without legal impediment to the person rendering the assistance; to provide procedural protection against the possibility of abuse of the
rights recognised by this Act; and for related pur-
poses.”

The legislation was the first in the world to legal-
ise Voluntary Euthanasia.

Labor MLA, Neil Bell, sought to have the Bill
repealed in the Northern Territory Parliament. But
his efforts were defeated on 22nd August, 1996
by 14 votes to 11. The law was then upheld by the
Supreme Court in Darwin.

The first assisted death under the Act occurred in
late September 1996. Four people in all used the
legislation to end their lives.

On 9th September 1996, MP, Kevin Andrews,
introduced the Euthanasia Laws Bill into the
House of Representatives to overturn the North-
ern Territory’s Rights of the Terminally Ill Act.

The Bill passed the House of Representatives in
early December 1996 and, after a long debate,
also passed the Senate on 25th March 1997.

That was almost seven years ago and it is my
view that the time has come for the Federal Par-
liament to again consider laws that would permit
voluntary euthanasia.

The situation for many people who wish to die
rather than exist in agonising and degrading cir-
cumstances has, if anything, become worse.

There has been ongoing debate about euthanasia
and more people have died without dignity and in
pain and suffering. Steps have however been
taken in other parliaments to give people this
choice.

In November 2002, my Democrat colleague, San-
dra Kanck introduced her Dignity in Dying Bill
into the South Australian Legislative Council. She
did this because, as she said almost 80 per cent of
South Australians support a well regulated system
of assisted suicide, indicating widespread accep-
tance across religious and social groups.

In WA, MLC Robin Chapple introduced a private
members bill which aims to establish an adminis-
trative structure for voluntary euthanasia that can
only be enacted by mentally competent adults
suffering a medically diagnosed illness that is
likely to cause death. It would legalise an adult
person’s intention to terminate his or her life and
provide immunity to a person assisting that per-
son. Debate began in September 2003 and it is
understood that both Liberal and Labor Party
members will have a conscience vote when it is
voted on early this year.

In New Zealand in July last year the Death With
Dignity Bill was narrowly defeated. Had it been
passed the bill would have allowed the seriously
ill to ask a doctor to help them die. Before be-
coming law it would have become law only after
it was supported by a majority of New Zealand
voters in a referendum.

In May 2002 a bill was passed by the Belgian
Chamber of Representatives decriminalising the
acts of intentionally terminating a patient’s life,
and also physician assisted suicide.

In the Netherlands, doctors who terminate a pa-
ient’s life are exempt from prosecution following
the passage of a bill—Termination of Life on
Request and Assisted Suicide (Review Proce-
dures) Act 2002. The doctor must be satisfied the
patient’s request is voluntary and well-
considered; satisfied that the patient’s suffering is
unbearable and without possible improvement; the
doctor has informed the patient of the relevant
facts of the situation; the doctor has consulted at
least one other physician with no connection to
the case; the doctor exercises due care in termi-
nating the life of the patient. The patients con-
cerned can include children over 12 whose par-
ents are informed.

In the UK House of Lords in June last year the
Patient (Assisted Dying) Bill was introduced that
would legalise voluntary euthanasia under strict
conditions. Renamed, it was reintroduced into the
House of Lords in January this year.

Euthanasia is no less controversial or complex
than it was seven years ago but those of us who
hold strongly to the view that euthanasia should
be a right do not want the prospect of law reform
in this area to evaporate just because the legisla-
tion to override the Northern Territory’s Rights of
the Terminally Ill Act 1995 was narrowly de-

In the last seven years much of the debate has
focused on the medical practice of keeping people
who are terminally ill on life support, sometimes
for years.

Julie Ann Davies’ thought provoking articles in
the Bulletin recently suggest there is confusion
about whether or not removing life support is euthanasia.

She says medical paternalism, doctors’ fear of litigation and their own ignorance of the law can and does lead to prolonged life support treatment despite family objections.

Despite patient directives which are provided for in Victoria, South Australia, Northern Territory, the ACT and Queensland laws, doctors are refusing to withdraw the treatment that is barely keeping them alive.

More than 1000 people outside hospitals in Australia are currently provided with artificial food and hydration via feeding tubes. This technology is also in use in nursing homes and hospitals.

A study by the Monash and Latrobe University study of Victorian GPs in 2001 discovered that 44% of GPs surveyed had little or no understanding of the legal effects of Victoria’s Medical Treatment Act which is meant to prevent treatment beyond what people feel they can tolerate.

That law is rarely used. The reluctance of doctors to make this decisions means more cases are coming before state and territory tribunals asking for rulings on requests from families for artificial feeding tubes to be withdrawn or withheld from dying patients.

Our reluctance as a society to participate in death and the dying process means we are stopping people dying from natural causes and we won’t let people die who expressly wish to do so.

How much discomfort, pain and distress are these people are experiencing? I doubt that anyone knows.

This month Catholic doctors and the Pontifical Council on Life will debate the right of patients to refuse artificial feeding in a forum in Rome. The Catholic church is deeply divided over this question.

Views differ in my own political party about euthanasia and we probably reflect the range of opinion in the broader community. I would expect debate on this bill to reflect the very strong views held, for and against euthanasia and I would expect that this would again be a matter for a conscience vote in the Parliament.

We have in this country seen significant progress made in palliative care and there are some who say this should be enough. I doubt that good palliative care is yet available to everyone but in any case palliative care cannot always ensure a peaceful and dignified death at a time of the choosing of the person who is dying.

I don’t think we have made much progress since 1997 on the debate about where our health efforts should be directed. Preventing disease and improving the health of Indigenous Australians should in my view be where our dollars and our determination go. Whilst most of our health funds are spent on people in their last few months of life, younger people have miserable lives because they can’t get dental services. We spend a mere $2 million a year persuading people to give up smoking when the effects of tobacco use cost $21 billion a year and half of those who smoke will die of a disease.

I don’t suggest that the dying should not get everything necessary by way of care and those who wish to be kept alive as long as is possible should be allowed to do so. But there are those who not only do not wish to be kept alive artificially but who have terminal illness and wish to die at a time and in the circumstances of their choosing.

In 1995 a group of Melbourne doctors published an open letter to the Victorian Premier. They said:

For the sake of all of those who may be unfortunate enough to be trapped in suffering and anguish, we ask you to put an end to the uneasy hypocrisy of our law and to allow us to work without fear of prosecution.

Each of us who has signed this letter has personal experience of treating terminally ill people whose condition has moved them to ask for assistance in suicide and each of us has, on occasion, after deep thought and lengthy discussion, helped such a patient to die.

We declare this now in public, knowing that this declaration may be construed in the State of Victoria as an admission of a criminal offence. We do this because we believe passionately that this state’s law on the assistance of suicide is wrong and because those who continue to support the law have failed to recognise the reality of our work.
We have assisted patients to end their lives and we know others who have. We believe that we have acted in the best tradition of medical ethics, offering our patients relief from pain and suffering in circumstances where it would have been an act of cruelty to deny them. We respect life. All of our professional training and work deepens that respect. However, the reality is that there are some patients who are beset by physical and mental suffering which is beyond the reach of even our most sophisticated efforts at control. When such patients clearly and repeatedly express a rational plea for help, it is out of respect for them that we have felt compelled to act.

The Northern Territory did act in response to patients and doctors in this situation and this bill would allow them to do so again.

As I said in the last debate, I hope that we can move to a discussion that goes beyond the questions of sanctity of life, with which we all agree, beyond the slippery slope arguments and the individual religious and high moral ground and get down to some of the real issues about dying.

I commend the bill to the Senate.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

HEALTH: MIDWIFE SERVICES

Senator ALLISON (Victoria) (3.39 p.m.)—I move:

That the Senate—

(a) notes:

(i) the proposal currently before the New South Wales (NSW) State Government to provide publicly-funded midwife services for home birthing for healthy women without medical complications, and

(ii) that home deliveries are the norm for about 10 per cent of births in New Zealand where interventions in births are significantly lower than they are in Australia; and

(b) encourages the NSW Government and other state and territory governments to foster and fund midwife services for home births.

Question agreed to.

COMMITTEES

Environment, Communications, Information Technology and the Arts Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.39 p.m.)—At the request of Senator Eggleston, I move:


Question agreed to.

Community Affairs Legislation Committee

Meeting

Senator FERRIS (South Australia) (3.39 p.m.)—At the request of Senator Knowles, I move:

That the Community Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 4 March 2004, from 4 pm, to take evidence for the committee’s inquiry into the Truth in Food Labelling Bill 2003.

Question agreed to.

ACADEMY AWARDS 2004

Senator LUNDY (Australian Capital Territory) (3.40 p.m.)—by leave—At the request of the Minister for the Arts and Sport, Senator Kemp, I move the motion as amended:

That the Senate—

(a) congratulates Russell Boyd and Adam Elliott for winning their first Oscars at the 76th Annual Academy Awards;

(b) notes that Russell Boyd won the Cinematography award for his work on Master and Commander: The Far Side of the World;
(c) notes that Adam Elliott won an Academy Award for best animated short film titled *Harvie Krumpet*;

(d) congratulates all those associated with the development and production of these films and their outstanding contribution to the development of great Australian cinema;

(e) congratulates all other talented Australians nominated for this year’s Academy Awards—Naomi Watts, Peter Weir, Wendy Stites, Lee Smith, John Seale, and Nathan McGuinness; and

(f) notes the contribution of Government film agencies, including the Australian Film Commission, to the development of Australian talent and Australian cinema.

Question agreed to.

MATTERS OF PUBLIC IMPORTANCE

Howard Government: Employment Policies

The DEPUTY PRESIDENT—The President has received a letter from Senator Sherry proposing that a definite matter of public importance be submitted to the Senate for discussion, namely:

The government’s policy that Australians should work longer and longer—work until they drop.

I call upon those senators who approve of the proposed discussion to rise in their places.

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

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

Senator SHERRY (Tasmania) (3.41 p.m.)—The motion that I move on behalf of the Australian Labor Party expresses concern at the Liberal Party’s new retirement incomes policy. The new Liberal Party policy as announced last week by the Treasurer, Mr Costello—and reinforced by the Prime Minister, Mr Howard—involves the philosophy that Australians should work longer. Australians should work longer and longer until they drop. The solution with respect to retirement incomes that Mr Costello in particular is advancing to the alleged crisis as a consequence of an ageing population—and I will come to that in some detail—is that Australians should work until they drop. To look at one comment of the Treasurer’s last week on his new policy approach, he said on ABC 720: ‘There is going to be no such thing as full-time retirement.’ There are a range of other comments from Mr Costello in particular and from the Prime Minister about Australians working longer and longer. This is the Liberal solution to what they argue is a crisis facing Australia with respect to our ageing population.

Let me make a couple of observations about the so-called crisis. There are a couple of interesting comparisons we can make, and even the Treasurer in his so-called *Intergenerational Report* makes the point that in terms of retirement incomes Australia does not face a significant problem with the ageing population. We know that at the moment about 11 per cent of Australians are over the age of 65. We know that in about 25 or 30 years the proportion will double to approximately 22 or 23 per cent of Australians over the age of 65.

But why don’t we face a crisis in respect of retirement incomes? Firstly, the Australian age pension, which I think is at $11,700 approximately for a single person, is very low by international standards. When we look at other countries—those in Europe and North America, including Canada, and New Zealand and Japan—we see that Australia has one of the lowest age pensions in the entire
advanced economic world. The fact that our age pension is so low is certainly nothing to be proud of. Of course, the other add-on to retirement incomes is superannuation. I have to say that back in 1987-88 the Labor Party introduced compulsory superannuation at three per cent as an add-on to the age pension. It was introduced to boost retirement incomes in this country.

**Senator Forshaw**—Who opposed it?

**Senator SHERRY**—I am glad you reminded me. The Labor Party were attempting to increase retirement incomes by introducing compulsory superannuation for the six out of 10 workers who had none—those who tended to be in the overwhelmingly lower middle income bracket such as truckies, shearers, construction workers and hospitality workers. The Labor Party said, ‘It is only fair that they should have an additional retirement income that reflects their working life income.’ Of course, the Liberal Party opposed it. I can recall the debates at the time. The Liberal Party were predicting doom and gloom if we, the Labor Party, attempted to increase the retirement incomes of Australians through compulsory superannuation. They vehemently opposed it. Most Australians went into what are called accumulation funds. Your money goes in, whatever the taxes, the fees and the return. That is where most Australians’ superannuation is. It is fully funded, and the assets are there. We have an age pension that is not significant, plus funded superannuation, so the retirement outcome for the future is quite reasonable.

The other issue is that Australia’s ageing demographic is about 20 to 25 years behind that of Europe or Japan. We are certainly in a far better position with our ageing demographic. That allowed the Labor Party to commence introducing policies that would lead to higher retirement incomes. The Treasurer, Mr Costello, can only boast about the so-called Intergenerational Report. The Liberal Party’s approach is, ‘We’ll have a report into the problem.’ He reissued the same report last week, but there was little action in terms of lifting Australians’ retirement incomes. I am reminded that the Labor Party had proposed to take superannuation from nine per cent to 15 per cent to increase the level of retirement savings. But who abandoned that additional six per cent into superannuation? It was none other than the Treasurer, Mr Costello. He dropped it in 1997.

**Senator Forshaw**—It wasn’t a core promise.

**Senator SHERRY**—It was not a core promise. But it was funded. It was in Mr Costello’s budgets from 1996 onwards. It was not dropped because of the budget deficit. It was dropped because Mr Costello and the Liberal Party do not like superannuation and do not like Australians having a high retirement income. To a significant extent, the Liberal Party and the Treasurer, Mr Costello, are caught in a problem of their own making. They refused to lift superannuation savings in this country when they refused to lift the contributions from nine to 15 per cent. The impact of that is that Australians have 40 per cent less in superannuation savings.

If we had got to the 15 per cent level, plus an age pension, we would not face most of these problems with retirement incomes. So the Liberal Party and Mr Costello are very much caught up in a problem of their own making. They refuse to accept that Australians should have higher retirement incomes across the board. They do not agree with that, so they have now decided in the name of an alleged crisis—the ageing population—that they have to deal with it in some other way. Frankly, it is a con. For the reasons that
I have outlined, this country does not face a significant problem in terms of retirement incomes as a consequence of the ageing population. The Treasurer is manufacturing a crisis and predicting doom and gloom. He is saying: ‘This is all going to be horrible. People shouldn’t get older; they shouldn’t retire. This is dreadful.’ I happen to think, on behalf of the Australian Labor Party, that it is a good thing that Australians are living longer and healthier lives. We should welcome that, and we should fund retirement incomes adequately to allow them to have a comfortable and relaxed retirement.

But what is the Liberal Party’s new policy, which was outlined last week? Their solution to a crisis they are attempting to manufacture on retirement incomes is to work longer—work until you drop. Today the Assistant Treasurer, Senator Coonan, could not explain what the Treasurer meant by saying, ‘There’s going to be no such thing as full-time retirement.’ She had no idea. I think it is pretty clear to the Australian population what the Liberal Party approach is. They are saying: ‘We don’t want any more full-time retirement. We want you to keep working and working longer and longer. There’ll be no cost to the public purse, the age pension, because you won’t collect an age pension because you’ll be dead.’ That is the incredible solution—

Senator Forshaw—We won’t need any nursing homes.

Senator SHERRY—That is right. We will not need nursing homes, and we will not need the PBS, because we will be dead. This is an incredible solution being put forward by the Treasurer, Mr Costello. This is the new Liberal Party. The only person the Treasurer does not want to work longer and longer is Mr Howard, because he wants his job. But let us put that issue aside. The Prime Minister, Mr Howard, wants to lead by example. If he wants to keep working until he is 70, 75 or 80, good on him, but don’t expect the rest of the Australian population to be inspired by his example. Don’t give the rest of the Australian population—who have come to expect, quite rightly, that they can retire at age 65 and get an age pension or access their super at age 55 or 60—a lecture about how they have become a burden on society and they have to keep working longer and longer and longer.

I found some of Mr Costello’s comments last week quite incredible. He said that he had been talking to company executives and that they want to work longer, work part time and sit on a company board. I suggest that the Liberal Party gets in touch with the real world by talking with a few mine workers, truckies, shearsers or hospitality workers. They do not want to work until the day they die. It is not very appealing to them, understandably. This country has a healthy economy. Its economy is doing well, albeit under the highest-taxing Treasurer in Australian history, and it can afford a decent retirement income predicated on the choice of Australians to retire when they want to.

The Liberal Party—Treasurer Costello, Prime Minister Howard and others—made a grand announcement last week about this new Liberal Party philosophy and approach to retirement incomes. Interestingly, the Treasurer said publicly that the access age for superannuation was 55—the age when a lot of people retire. He repeated this over and over again last week in the media. But he was wrong: the access age for superannuation is 60 if you were born after 1964. The Treasurer should have known this, because he changed the law himself. It was the Treasurer, Mr Costello, who increased the superannuation access age from 55 to 60 back in 1998.

Senator Watson interjecting—
Senator SHERRY—It is not a semantic issue, Senator Watson, because the Treasurer, Mr Costello, gave a lecture to the Australian people only last week saying that the super access age is 55 when in fact for more than half of the Australian population it is 60—and he increased it to 60. This is the Treasurer, Mr Costello, hiding the fact that he has already started to increase the access age for superannuation. He has already started to effectively force Australians to work longer. It will not stop at 60. In five or 10 years time, if the Liberal Party is still in power, unfortunately for people who want to retire, it will be 65—and then it will be 70 and 75. That is what will happen. The Liberal Party will keep increasing the effective age of retirement to force you to work longer, until the day you drop dead. That is the Liberal Party’s solution.

Last year—and it did not get a great deal of attention—we had a report leaked to us from the Department of Finance and Administration. The Liberal Party has been doing a lot of work on this so-called policy over the last year or two. The finance department document, which got some publicity at the time and made recommendations to Treasury, was advocating increasing the pension age and the super access age to 70.

Senator Ian Campbell—We had an Access Economics document leaked to us last week.

Senator SHERRY—Senator Campbell, there is no doubt that you are implementing the ‘work longer’, ‘work till you drop’ agenda. That is your solution. The Labor Party happens to see the issue of ageing in a positive light. It is good that Australians are living longer and healthier lives. They have come to expect, from what is a reasonably wealthy society, to retire—(Time expired)

Senator WATSON (Tasmania) (3.56 p.m.)—Again, these are attempts to get cheap, dramatic headlines. There is no such crisis as the one Senator Sherry is referring to. What the Liberal-National coalition government is doing is recognising that, over the next 40 years, Australia’s population will go through a major shift in that the greater proportion of the population will be older. Because these people are living longer and birthrates have declined over many years, there will be an increasing number of older people to support and fewer people in the work force to provide that support.

Australia is in the fortunate position of not being in a similar position to some of the western European countries that really have a major ageing population. What we are doing is recognising and planning for the long term by providing more opportunities and greater flexibility as we recognise that more of our population will be ageing. For example, by 2042 our population is projected to increase by around 30 per cent, to 25 million, and the number of people aged 55 and over will grow faster than the number of people under 55. That is the basis on which Peter Costello produced this report.

The matter of importance must be recognised in the light of the government’s recently recognised initiatives to provide a more flexible and adaptable retirement income system to benefit all Australians. In fact, our Senate Select Committee on Superannuation recently focused on the need for a retirement plan. We were concerned about the redundancy of mature age employees, including the economic and social considerations; the sustainability and adequacy of retirement income; and life after retirement. The government has used this report and other demographic studies and built on them to come out with quite a comprehensive system. Indeed, it was a breath of fresh air when the Treasurer announced the recent initiatives relating to superannuation and ageing, particularly when he picked up so many of the
initiatives of our committee, of which Senator Sherry was a part.

We in Australia have a very sound superannuation system which is based on concessions for voluntary contributions—a compulsory superannuation fall-back system in the form of our government pension. It is a system that is admired around the world. What we want to do is build on this sound system for the future by recognising the demographic trends. Unlike many European systems which are currently being pared back because they are financially unsustainable for the future, Australia does not have a system which threatens our budget vulnerability or viability at all. But we have to recognise that, given the demographic changes to our population, there is a need to provide some planning and focus and, thankfully, to provide some debate so that at the end we will get better reason, argument and outputs than we have.

These issues have been the focus of many of our Senate committee reforms of the superannuation system, of which Senator Sherry was a part. I regret that there has been a departure of bipartisanship to provide cheap political points at the moment. What we were consistently doing in our reports over time was providing avenues for improving standards of living in retirement; we were also looking at reducing budget outlays in the longer term and, above all, instilling a greater confidence in superannuation. Hence my endorsement, as a former chair of the committee, of the Treasurer’s initiative because, as I have said, he has picked up a lot of the initiatives which our committee has been speaking about for a very long time.

What is happening in Australia? People are living longer and are demanding higher standards of living in retirement but, at the same time, birth rates are falling. Employers will be looking increasingly towards people who have retired because there will be a shortage of skilled workers. For too long Australians have devalued the skills that older Australians can provide. These government initiatives are about giving Australians more choice about retirement, not compulsorily making Australians work longer, as has been suggested by the opposition. Senator Sherry may recall that, as deputy chair of the Senate committee, he in fact agreed to the recommendations of the report by signing off on it. For example, the committee recognised that part-time work could be an integral step towards final retirement—a gradual transition from work to retirement. It enables mature age workers to retain a connection in the work force—at their choice—while they maintain some income and pro rata conditions of employment such as annual leave and sick leave.

The committee therefore recommended the government investigate mechanisms to promote the availability of appropriate part-time positions for mature age workers so they can have an orderly transition towards retirement. The committee report also recommended the government consider ways of making retraining assistance available to mature age workers under the Australians Working Together program. I am also pleased that the government has announced in its initiatives, as the committee did, the benefits of making the transition from full-time work to retirement easier for individuals. The government has recognised the need for people to retain a connection with the work force. The skills and experience of some older Australians will make many of these people valuable employees well into the future.

From 1 July 2005 people who have not retired will be able to access their superannuation as a non-commutable income stream once they have reached their superannuation preservation age. This will allow more flexi-
bility in the transition to retirement. For example, a person can continue to work on a part-time basis and use part of their superannuation to supplement their income. This will provide a higher standard of living and give them more choices—they can go on that caravan trip that the Labor Party was referring to. But this does not mean, as Senator Sherry has construed, that all people will be forced to work until they drop. The government is affording people choice and recognising that this option will not necessarily suit everybody. Certainly, we would not expect a builder or a bricklayer to continue working into their 70s or 80s, although some might wish to do so. However, there are certain occupations and certain people for whom this option would definitely offer a new opportunity.

Another recommendation of the committee was that the government should look at a means of reforming the Commonwealth government’s defined benefits scheme to remove the disincentive to continue working beyond a certain age—very sensible. In the light of this recommendation, I welcome the government’s initiative in simplifying the work test for those aged over 65. At present people aged 65 to 74 must work at least 10 hours per week to be eligible to make contributions, and the superannuation fund must pay out a member’s benefit if they do not meet this test. We are removing the red tape that is necessary—removing all those hindrances for those who wish to continue to work. This is certainly a great initiative. The government is making great progress.

What is Senator Sherry all about? He is all about regulation, he is all about prescription, he is all about compulsion and he is all about red tape; no choice, no flexibility, one size fits all for all Australians. How hopeless. Perhaps we should look at the system. We are providing more flexibility for income streams. We are giving people the opportunity of working part-time and supplementing their income with their superannuation—a very important measure. But we are also providing more choices about how people are able to finance their retirement. The removal of the work test is a very important one. We are extending the complying status to market linked pensions. In other words, we are providing for the first time a market linked complying pension and, therefore, we are giving people who retire the opportunity to have growth in their pension. At the moment they are all fixed. There is a lot of reform happening.

Who are the people who are saying yes, yes, yes to Mr Costello? The seniors association, the baby boomers of New South Wales, the opposition leader himself, the Australian Chamber of Commerce and Industry, the Business Council of Australia and a whole host of other people are all recommending and endorsing this policy. It is about time the federal Labor opposition endorsed the policy too. (Time expired)

**Senator FORSHAW (New South Wales)** (4.07 p.m.)—I think it is sad that Senator Watson—a person whom I think we all have some respect for on superannuation issues—has had to come into this debate today and try to defend the bandaid solution that the Treasurer has put forward. Senator Watson himself knows that, despite all of the rhetorical flourish that we have just heard, the history of superannuation shows that it was the Labor Party that brought about universal superannuation for all Australians. No ifs, no buts.

Prior to 1987, superannuation was the preserve of politicians, wealthy employers, a few workers in some key industries and public servants. Today all Australians enjoy access to some form of superannuation. It was a Labor government, with Paul Keating as Treasurer, colleagues such as Senator Cook
as the then minister for industrial relations and Prime Minister Bob Hawke who, together with the trade union movement, brought about universal productivity superannuation in this country—and they did it over the objections of the Liberal Party. Let me remind the Senate of what John Howard said about the Labor government’s policy—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Mr Howard or the Prime Minister, please, Senator Forshaw.

Senator FORSHAW—At that stage he was John Howard.

The ACTING DEPUTY PRESIDENT—Mr Howard, then, Senator Forshaw.

Senator FORSHAW—I am indebted to Alan Ramsey for drawing attention to this issue. I do not often agree with things that Alan Ramsey writes, but I urge all Australians and all senators to read Alan Ramsey’s article on Saturday. It puts the lie to the nonsense that has been perpetrated by the Treasurer. In 1985, in a speech to the Australian parliament, Mr Howard said:

The issue of superannuation is, day by day, assuming more importance in the economic and political debate, and well it may, because the current campaign for superannuation benefits which flows out of the negotiated prices and incomes accord [between the government and the ACTU] owes more to a Chicago style extortion racket than it does to a proper and logical extension of superannuation.

That was the attitude of the Liberal Party in those days. And I well recall it, because I was involved in many cases before the Industrial Relations Commission and in the negotiations that brought about that great benefit for Australian workers—productivity superannuation across the board.

I can recall going to the Industrial Relations Commission and arguing—I think the hearings went on for over a year—to get three per cent superannuation for shearers and pastoral workers in this country. It was opposed by the employers; it was opposed by the National Farmers Federation, led at the time by Ian McLachlan who subsequently became a Liberal minister in this government; it was opposed by people like Paul Houlihan, an apologist for these Tories on the other side. Who was the barrister representing the National Farmers Federation, who were opposing some of the lowest paid workers in this country in getting superannuation? Who was the barrister who appeared for them? Peter Costello.

The ACTING DEPUTY PRESIDENT—Mr Costello.

Senator FORSHAW—He was Peter Costello, industrial barrister at that time, Mr Acting Deputy President.

The ACTING DEPUTY PRESIDENT—He was still Mr Costello.

Senator FORSHAW—It was opposed by the now Treasurer, Mr Costello. So when it comes to superannuation, do not lecture us about superannuation, Senator Watson, Senator Ferguson or any other senators on the government side. The Labor Party are responsible for the extension of superannuation to all Australians. The truth is made even more stark when we recall that, prior to the 1996 election, Mr Howard and Mr Costello promised that if they achieved government they would honour the commitment of the Keating government to extend the superannuation payment to 15 per cent. That was a promise made by the Liberal Party at that time; it is on the record. What did they do? They reneged on that promise, and today it is frozen at nine per cent. If you want to do something serious about extending superannuation for the people in this country, go back and revisit that policy when you were prepared to say to the Australian people that you would do something about increasing the contribution made to people’s superannu-
ation and honour that target figure of 15 per cent that was promised.

We heard Senator Coonan today also trying to defend the government’s position on this so-called policy. I have to say that there are some good initiatives in this policy. There are a couple of good initiatives, and we have said that. We have openly acknowledged that. But they do not go far enough, and they are nothing more than a bandaid solution. This is not a retirement incomes policy by this government. This is not an ageing policy by this government. This is not a policy at all. This is nothing more than a rehash of some themes that have been advanced in the past by Mr Costello and Mr Howard, which they are suggesting they may actually get to at some point in time. They recognise the problem, as we all do, of the ageing population, but they are not really doing anything serious about it. Senator Coonan said that they were engaged in forward thinking and creative thinking. There is nothing terribly forward or creative in the proposal that has been put forward. I suppose the only creative thing involved in this is that Mr Howard has actually got Mr Costello to announce a policy which asks Australians to work longer. That suits Mr Howard, the Prime Minister—we know that. Mr Howard wants to stay around as Prime Minister, it appears, forever; and Mr Costello, of course, is not too keen on that.

Senator Ferguson—I don’t notice you retiring. You might be forced to.

Senator FORSHAW—I will leave that to the voters of New South Wales, and I am very confident that the voters of New South Wales will make the right decision whenever the election is called.

In this proposal—I should not call it a policy: it is a ‘work till you drop’ policy’—the Treasurer also talks about introducing further flexibilities and reforms in the workplace.

The paper released by Mr Costello has the heading ‘More flexible work options’. I will quote from the speech he made at the time that he released the paper. He says:

A number of further workplace relations reforms are currently proposed: reform of unfair dismissal laws to minimise the impact on employment, particularly for small business; simplification of procedures for agreement-making; improvements to the remedies and sanctions against unprotected action; improvements to bargaining processes; and improvements to the processes for union right of entry to the workplace. These reforms have been blocked in the Senate.

First of all, there is nothing new there. This is simply what this government has been trying to push through this parliament for years. Its policies and proposals are about reducing wages and working conditions for ordinary Australians across this country and attacking the trade union movement. That is the sum total of the so-called ‘flexible work options’ that the Treasurer is talking about to assist us to deal with the ageing population into the future.

This is a policy about working longer for less. That is what this government is on about. Senator Watson, you can tinker at the edges of some of the proposals to access superannuation as a part-time worker and so on—some of those ideas, we agree, are good—but, if you are going to talk about intergenerational change and the major problems this country will face in the years to come with the ageing demographic, you have to deal with it holistically and consistently, not with the piecemeal approach that this government is undertaking.

Let me raise one other issue. We are still waiting for the Hogan report—this government’s report on aged care—to be released. Professor Hogan is wandering around the country making speech after speech about some of his proposals in respect of aged care and how to deal with the increasing costs in
that area, but the government is still sitting on the report. It will not release it. Why not? Millions of dollars have been spent on this report, but the government will not release it. Let us have a fair dinkum debate on these issues. Let’s not have these attempts by the Treasurer to keep himself in the public eye by trying to demonstrate that he has a broader portfolio range than simply Treasury matters and industrial relations in the vain hope that he thinks he may still become Prime Minister—or maybe even Leader of the Opposition—in the not too distant future. This is a work-till-you-drop proposal. It is a work-longer-for-less proposal, and it certainly needs to be taken back to the drawing board.

Senator FERGUSON (South Australia) (4.17 p.m.)—I could remind Senator Forshaw that he is one of those who want to work a bit longer too; otherwise he probably would not have stood for preselection. He is well past retirement age. Maybe the electors of New South Wales will give him his wish so that he can retire and spend all those years in retirement. In an earlier debate I said that the policy of the Labor Party is quite clear: work shorter for more money, so you can spend more time in retirement spending future taxpayers’ money. That is the policy of the Labor Party—do not try to address the problems of the ageing or the changing demographics of our society.

It seems as though Senator Forshaw has one rule for Labor and one for everybody else. We hear his new leader saying: ‘Don’t look back at broken arms and all those sorts of things, look forward. We’re a party of the future.’ So what did Senator Forshaw do? He quoted from a speech that Mr Howard made in 1985. That is really looking forward! That was about the time when Senator Forshaw was enjoying his time as a union representative, going around trying to increase the salaries of shearers and at the same time trying to limit their productivity. His idea was: ‘We’ll increase the wages, but don’t let them have wide combs, because we might improve their productivity.’ The Labor Party’s line is: ‘Work less for more money so we can then go into retirement and spend somebody else’s taxes.’ I must say, Senator Forshaw, I am disappointed to see you follow that.

Senator Sherry came in and made a big song and dance about working longer. What is happening is that the mix is changing. The demographics are changing to such an extent that, as people move towards retirement, they still want to work. Ask nearly every Comcar driver lined up outside. Nearly every Comcar driver wants to do some part-time work to supplement their income as they move towards retirement. I would suggest to Senator Sherry and Senator Forshaw that, when they go home tonight, they ask their Comcar driver what they think about stopping them from their part-time job because they have moved into a retirement phase. A lot of them have moved into retirement. There are only 10 or 11 full-time drivers. The rest are part-time. They want to be able to move towards their retirement while earning more money to help them to have a better life in retirement.

Senator Forshaw, one of the things you need to remember—as I said in an earlier contribution today—is that, if we follow the Labor Party policy, people will spend longer in retirement than they ever spent working. That is your policy—to spend longer in retirement than you ever spent working. With the current increase in life expectancy, people who retire at 55 or 60 can expect, on average, 25 to 30 years in retirement. That is the average life expectancy. We need to address this problem of the ageing population. If we are going to lower the tax base of those who will have to pay for this ageing demographic—who are going to live longer in society and will require greater medical at-
tention at great cost to the Australian government, and to other governments—we need to do something about letting people work to supplement their incomes and giving them access to part of their superannuation as they move into their older age. To do otherwise is to ignore the fact that Australia is a changing society. Because we have such a wealthy society and because our economy is so strong people have greater expectations. Sure, they want to go on their caravan trips around Australia—

Senator Forshaw—Is Warwick Parer working part-time?

Senator FERGUSON—He is working nearly full-time, if the truth be known, because, like a lot of people on this side, he wants to work longer. I also want to keep working longer too, because by working longer it means that people are putting some choice back into their lives. They can choose the quality of life that they want to have in retirement if they are able to supplement their income or supplement the superannuation that they have already put aside. Senator Forshaw makes great play of the fact that the Labor Party introduced compulsory superannuation.

Senator Forshaw—And you opposed it!

Senator FERGUSON—I never opposed it personally, Senator Forshaw. I never have and I never will. Having introduced compulsory superannuation, what did the Labor Party do? They then tried to tax it out of existence. Every single tax that we have on superannuation today—except for the superannuation surcharge, which was introduced by this government and which affects only upper income levels—has been imposed by the Labor Party. They could see that the employer contribution that was being paid on behalf of employees was a way of getting a little bit of extra tax out of an employer as well, because it was coming out of the contribution put in on behalf of employees. What did the Labor Party do in the early nineties to their working friends—anybody who had their own personal superannuation scheme, anybody who was a worker? They took away the tax deductibility that workers had at that stage for any personal contribution up to $3,000. They took away the tax deductibility for their own workers. If you do not remember it, go and check the records. I was working in the industry at the time and remember it well. The Labor Party took away any tax deductibility for workers who wanted to add to their superannuation contributions put in by employers. Workers wanted to add to their superannuation to try to provide them with a reasonable benefit in their retirement. However much the Labor Party claim to be the party that introduced compulsory superannuation into Australia, they certainly do not deserve credit for what they have done to compulsory superannuation since its introduction.

The other thing that you need to remember is that with changing demographics, in some of our oldest work forces—and I know that agriculture has the oldest work force in Australia, with a median age of 45 years—there will be people with special skills who will be required to work longer. There is simply nobody to replace workers with special skills and, provided they want to work longer, why should we as a government not give them the choice to remain in the workforce? There are many people who want to continue working. They do not want to drive around Australia in a caravan; they do not want to play golf every day; they do not want to do all of those things which people tend to highlight as the great attributes of being retired. What they want to do is keep working and earning and take themselves away from being a burden on the taxpayer.

It is interesting that education has the next highest median age of 43 years. That is the
average age of people involved in the education sector. It is also strange that the youngest median age is 32 years for accommodation, cafes and restaurants and 31 years for the retail trade. There are a number of work forces where we know that people will want to continue working and this government should not put an impediment in their way. Let them have the choice of a good retirement by contributing to it themselves. (Time expired)

Senator CHERRY (Queensland) (4.25 p.m.)—It is interesting listening to the contributions to this debate. I should declare that my contribution will be unique because of all speakers in this debate I am the only person in the age cohort who already has their superannuation preserved to age 60, having been born in 1965. Like all people who turned 40 this year or are younger, my superannuation is already preserved to that age. It is interesting that in this debate we are talking about a range of different things. Before I start my speech I should note that, as matters of public importance go, this is one of the silliest worded matters of public importance I have ever seen. Ordinarily, I am a big fan of Senator Sherry’s work on superannuation but the wording of this particular MPI is something which really does demean the notion of an MPI.

Having said that, it is pleasing to have had the contributions from Senator Sherry, which raised some very important issues, and also from Senator Watson. Like Senator Sherry and Senator Watson, I was part of the Senate Select Committee on Superannuation. The report on planning for retirement made some really good recommendations about trying to improve that transition from work to retirement and trying to ensure that people beyond retirement age or approaching retirement have a whole range of different options about the extent to which they work part time or full time or go into retirement. Opening up that debate, the enormous public reaction to that report, both positive and negative, showed us that it is a debate this country has to have.

To that extent, the Treasurer should be commended for making a statement which raises some of those issues. Having said that, it is disappointing that some of the premises of the debate are so fundamentally flawed. For example, the Intergenerational Report that was released with the budget two years ago was based on a whole range of outrageous assumptions which underpinned the credibility of the report and the importance of this debate. The Treasurer in his statement said:

This is the most important debate that Australia should have at the moment.

Yet the Intergenerational Report had cooked the books in terms of the extent to which changes in demography over the next 40 years will impact on our budget in particular. Remember the Intergenerational Report predicted an annual budget deficit of around five per cent of GDP by 2040, with most of that increase coming from the changes in aged care help and the PBS. Senators will recall that the Treasurer used the report and its cooked assumptions to try to argue against a co-contribution to the PBS back in the 2002 budget. That argument was pretty quickly debunked when, through Senate estimates and other processes, we discovered that the assumptions underpinning the Intergenerational Report assumed worst case scenarios on the PBS for drug costs. It took the assumption of the high amount that people spend on drugs in the last few years of their lives and extended it across the entire life-span and did a whole range of other things which cooked the books even worse. In fact, around 2040—and I think earlier speakers have mentioned this fact—we will probably be facing a similar demographic profile to that faced by Europe now. To be perfectly
honest, looking at Australia’s growth rates, looking at the way we are going, we can afford it. We can afford it without going into crisis, with some decent planning and some decent forward thinking, without having to throw out the baby with the bath water by cutting deeply into our social safety net and our health system.

It should be noted that some of the crises talked about in the Intergenerational Report, such as health costs and aged care costs, have already arrived. It is time for the government to own up to the crisis in our aged care system and to own up to the crisis imposed by the underfunding of aged care over a very long period of time. I had a briefing from Aged Care Queensland only last month, and it is worth noting that the cost of underfunding aged care, in terms of the indexation of aged care funding to the so-called index that the government uses, is less than the cost of running a nursing home. For example, the indexation used for wage costs is only about 1.2 per cent a year, as opposed to the increase in the wages paid by nursing homes of about six to eight per cent a year. As a result, compared with the funding in 1995, the sector has been underfunded by about $400 million to $500 million a year. So it is not surprising that we see the Salvation Army seeking to exit the sector because they can no longer afford to keep their homes going.

Over the course of the next two to three years as this crisis bites further because of underfunding in the aged care sector, we will see more and more of the smaller homes, particularly in regional areas, closing their doors because they will not be able to afford to stay open anymore. So in terms of whether the crisis in aged care arrives in 40 years time—it is actually here now. It is time for the government to recognise that and deal with some of the recommendations in the recent expert report and come up with a long-term plan for aged care, starting now and funded now.

The other point I want to talk about is the importance of mature age workers. I think the Treasurer was correct to draw attention to the importance of ensuring that mature age workers are valued by the labour market, by employers in particular. The record is extremely poor. This came through in particular in the independent review of the Job Network done by the OECD and the Productivity Commission. The review found that time and again mature age workers were the most likely to be churned through the Job Network system without any particular assistance and that they were more likely to report that Job Network providers failed to meet their needs.

To his credit Minister Brough acknowledged that and sought to increase the incentive payments for the placement of mature age workers. But that does not deal with the issue that the whole Job Network program is designed around the easy to place workers and getting them churned through—high-turnover, low-margin work is the nature of the Job Network market. Yet, there is a much more endemic problem with mature age workers: it is that whole belief that comes through the TV that being young is beautiful and being old is ugly. That is something fundamental in our labour market that we need to deal with at the employer level and right through to the job agency level. We need also to deal with it to some extent with the workers themselves, to deal with issues of esteem and training, to ensure they are confident they have the skills to address the labour market.

One of the barriers to work force participation that faces older workers, usually defined as those over 50, is discrimination in the workplace. One Australian study, the Maxwell study, found that managers in 20 Australian firms thought older workers were
more likely to be inflexible and complacent and to have health problems and that retraining them involved increased costs. However, in a range of analyses age was found to be a poor predictor of productivity or performance. Older workers were not less productive than younger workers. In comparison with their younger counterparts they were found to have lower job turnover, less absenteeism and less sick leave. The view that retraining older workers is more expensive than training their younger counterparts has been challenged in a range of studies; I think the 1998 Encel study challenges that view. The OECD has found that changes in employer attitudes and encouraging the concept of lifelong learning to maintain attachment to the work force have the potential to increase work force participation rates for older workers. It is absolutely essential to get more serious assistance for mature age workers into our employment policies.

I want to deal with one of the issues raised in the Treasurer’s press release last week. I welcome the initiative of simplifying the superannuation guarantee notional earnings base. This has been a major issue in my home state of Queensland for quite some time. At the moment, the way in which the superannuation guarantee is calculated excludes shift allowances and loadings—it excludes a whole range of important parts of remuneration. In fact, yesterday I had a mining union representative in my office who pointed out that up to 50 per cent of the earnings of a miner are not actually wages and are not included in the superannuation guarantee notional earnings base. The Treasurer has said that he will move to have a more consistent procedure for the earnings base, which is a great initiative. It is a very good initiative which will ensure that those workers, whether they be miners, nurses or other shiftworkers who have large earnings which are nonwage, will have their full superannuation paid for.

But why on earth does the Treasurer’s policy say that this will not apply until 1 July 2010? Why is it that we require six years to fix an anomaly which has been there since the superannuation guarantee was introduced and denies a large part of a person’s wage from the calculation of the superannuation guarantee? When you are dealing with an identified anomaly like that, when we are talking about ensuring that people have a decent retirement, why give employers until 2010 to meet this requirement? Why not apply it immediately because they are now underfunding the superannuation obligations of their work force? This is one of the things I do not understand in what comes out from government: so often the lead times are too long, the initiatives are too small and the commitment to a better outcome for workers is too puny. I think that particular initiative is a good example of a good and welcome intention, but there is too long a time frame to make a difference in ensuring a decent retirement for workers who rely heavily on shift allowances and loadings.

Senator KNOWLES (Western Australia) (4.35 p.m.)—Today’s debate is an interesting one. I pose a rhetorical question to the Senate: what do all of the following have in common: tax reform; work for the dole; top-ups to family tax benefit; health reform; increases in the number of apprenticeships; temporary protection visas; border control; the Iraq war—

Senator Patterson—I’ve guessed!

Senator KNOWLES—I’ll bet you have guessed, Senator Patterson—the creation of more opportunities for tertiary education; disability support reform; industrial relations reforms that will give people more flexibility in the workplace and greater wages; pharmaceutical benefit reform; and, now, the crea-
tion of choices for older Australians as to when they retire? The common denominator in all of those issues and many more is that the Labor Party rejects the lot.

*Senator Patterson*—The Medicare safety net.

*Senator KNOWLES*—Yes, the Medicare safety net, the MedicarePlus package to give people more benefits when they have out-of-hospital expenses. The Labor Party rejects the lot. I find that pretty amazing because that mob over there that purport to be Her Majesty’s opposition are not acting in the interests of this country. For them to take the position they have this week on this subject is inane. You could only describe as inane this MPI today in which Senator Sherry has said that the government’s policy is that Australians should work longer and longer—work until they drop. Do we want to be taken seriously in this place?

*Senator Patterson*—School kids could do better than that.

*Senator KNOWLES*—Exactly, Senator Patterson. But we get this inane, pathetic, poking fun jibe, ridiculous MPI. But, at the end of the day, it is the Labor opposition that is opposing again and again. This issue is particularly important to a lot of older Australians, and I challenge this Labor opposition that is now so out of touch with the community to ask older Australians: ‘Do you want to be chopped off from your contribution to society at 60 or 65 or do you want an opportunity to continue to contribute?’ Anyone who has looked at the way in which many people go downhill in their health, in their wellbeing and in their general attitude to life the moment they retire would say, ‘No, we want to be given the opportunity to continue to contribute in a working environment and we want to be able to have the benefits that go with that.’

The Labor opposition would have everyone retire at a particular age, yet they saw fit, with our assistance, to increase the retirement age of women. We agreed with that because we thought it was in women’s best interests to do so. But when we talk about providing opportunities for people to retire later or to receive superannuation benefits and income benefits simultaneously, they say no. One of the other most fundamental items that I missed on my shopping list of opposition by the opposition was the other great benefit for Australia, and that is the free trade agreement. Each week we have something the government is trying to do to benefit the people of Australia and this opposition opposes it. At no stage have they asked, ‘What is in the interest of Australia? What is in the interest of older people?’ They could not care less. They will not support anything. They will not look at the benefits.

Those people who want to retire can retire. That is what makes this contribution of Senator Sherry’s even more inane: ‘work until they drop’. I would have thought he had the intelligence to write something a little more substantial and senatorial than ‘work until they drop’. They can retire whenever they want to retire. There is nothing in the government’s package that prohibits retirement but there is a lot in the government’s package that will enable them to have a better retirement. If the Labor Party had their way, they would say to retirees, ‘Sorry sport, if you have not saved enough and have not got enough when you retire, that is your problem not ours. If you want to go on holiday and you cannot afford it, tough. If you want to go and buy a new car and cannot afford it, tough. If you want to go and buy a new refrigerator and you cannot afford it, tough.’ What we are saying is that, if people want to have a better lifestyle in their retirement, let them balance what they want to do
in retirement with the income that they might get from part-time work.

We are also doing away with the weekly work test, which has been a disincentive for a lot of people to get some part-time work because it has been too difficult to track. People who want part-time work or contract work or whatever will now, under this package, be able to have the work test done every year. Isn’t that much more sensible? No, not according to the opposition. The opposition want to oppose that because we cannot have people having choice. There is nothing about choice that the Labor Party like. I have said it in here and I will continue to say it time and again—you have got the old joke: ‘Knock, knock, who’s there?’ Mr Latham and all his mates in the Labor Party. All they will now do is knock.

I want to see Labor’s retirement and superannuation policies because their last superannuation policy, put down by this infantile Senator Sherry, lasted a matter of days. Let us see what the next one is. Let us see whether there is any choice in it because there is nothing that has been put to this parliament in this week that has indicated that there is any support whatsoever for freedom of choice of older Australians. That, I think, is abysmal.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! The discussion on the matter of public importance is concluded.

COMMITTEES

Scrutiny of Bills Committee
Report

Senator CROSSIN (Northern Territory) (4.42 p.m.)—I present the 2nd report of 2004 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 2 of 2004, dated 3 March 2003.

Ordered that the report be printed.

Senator CROSSIN—I move:

That the Senate take note of the report.

As senators are aware, the Scrutiny of Bills Committee considers legislation to ensure that it complies with appropriate civil liberties and principles of administrative fairness. It does this by bringing to the attention of the Senate provisions of bills which may infringe upon personal rights and liberties or which delegate legislative powers inappropriately or without sufficient parliamentary scrutiny.

In keeping with this principle, the committee would like to take this opportunity to draw to the attention of the Senate two items in the Alert Digest that I have tabled today that highlight important aspects of its work. Firstly, although the committee primarily comments on provisions in bills, it also has the power to comment on provisions in acts of parliament that may infringe its terms of reference. In this case, the Regulations and Ordinances Committee drew the attention of the Scrutiny of Bills Committee to a provision in the Environment Protection and Biodiversity Conservation Act 1999 that allows for a wide delegation of power.

That provision authorises the Director of National Parks to delegate his or her powers or functions to ‘a person’, as is specified under the act. Generally, the committee prefers to see a limit set either on the sorts of powers that may be delegated or on the categories of people to whom those powers might be delegated. The committee is, therefore, seeking the minister’s advice as to the reason for providing this unfettered discretion. On behalf of the Scrutiny of Bills Committee, I want to thank the Senate Regulations and Ordinances Committee for drawing our attention to that fact. We will be reporting on the minister’s advice in coming weeks.
Secondly, I want to comment on the committee’s comments in its digests and reports. Sometimes our comments may result in amendments being made to provisions in bills. The committee today is pleased to note that amendments to the Migration Legislation Amendment (Identification and Authentication) Bill 2003 introduced by the Minister for Immigration and Multicultural and Indigenous Affairs addressed its concerns in relation to the width of the discretion to prescribe circumstances in which personal identifiers must be supplied. It is not often that we have a minister who takes on board the matters the Scrutiny of Bills Committee picks up that it believes breach its terms of reference and who ensures that government amendments are made to legislation. In this instance that was done by the minister concerned, and the committee would like to thank the minister for introducing those amendments.

Question agreed to.

DOCUMENTS

Auditor-General’s Reports
Report No. 33 of 2003-04

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 33 of 2003-04—Performance Audit—Australian Taxation Office’s Collection and Management of Activity Statement Information.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Membership

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (4.48 p.m.)—by leave—I move:

That Senator McLucas replace Senator Buckland on the Rural and Regional Affairs and Transport Legislation Committee for the committee’s inquiry into the administration of Biosecurity Australia concerning the revised draft import risk analysis for bananas.

Question agreed to.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Workplace Relations Amendment (Transmission of Business) Bill 2002

MEDICAL INDEMNITY AMENDMENT BILL 2004

MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION AMENDMENT BILL 2004

CUSTOMS TARIFF AMENDMENT (PARAQUAT DICHLORIDE) BILL 2004

First Reading

Bills received from the House of Representatives.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (4.49 p.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have one of the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.
Second Reading

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (4.50 p.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—

MEDICAL INDEMNITY AMENDMENT BILL 2004

On 17 December 2003 the Government announced new medical indemnity measures. These new measures will contribute $181 million from now to 2006-07, making medical indemnity insurance more affordable for doctors. Affordable medical indemnity costs for doctors mean that they will be able to keep doing what they want to do—provide vital medical services to the Australian community.

This bill, together with the Medical Indemnity (IBNR Indemnity) Contribution Amendment Bill 2004, provides a legislative basis for the Government’s new medical indemnity measures. It builds on past measures and addresses some of the key medical indemnity problems facing doctors.

The Government has worked hard to solve medical indemnity problems over the last two years. In late 2002 and early 2003 it legislated to provide a prudential and financial framework for the medical indemnity industry and for doctors.

For the first time organisations offering medical indemnity cover were brought under the supervision of the Australian Prudential Regulatory Authority. Organisations were also required to offer cover under contracts of insurance—which was a big plus for doctors as they now had certainty of cover.

The Government has previously invested substantially in medical indemnity:

• it has taken on the liability to fund some $485 million worth of UMP’s incurred but not reported liabilities (IBNR) claims—which were

threatening to put UMP into permanent liquidation;

• it has agreed to fund half the cost of all of claims that exceed a $500,000 threshold through the High Cost Claims Scheme (HCCS)—a scheme which reduces medical indemnity providers costs and so limits the financial pressure on doctors’ premiums;

• it has ensured that doctors will not be personally liable for the amount of any claim which exceeds their level of insurance (provided they have $20 million worth of cover)—under the Exceptional Claims Scheme; and

• it has provided direct financial assistance to obstetricians, neurosurgeons, procedural general practitioners and GP registrars undertaking procedural training.

The Government has also continued to work closely with the State and Territory Governments in pursuing tort law reforms to reduce the volume and cost of claims against doctors.

These past initiatives have built a solid foundation for the long-term viability of medical indemnity, but it is fair to say individual doctors continued to feel the pinch of medical indemnity costs. Without further assistance it was clear that medical indemnity costs would continue to be a financial challenge for many doctors.

The Government responded to doctors’ continuing concerns in October last year by setting up the Medical Indemnity Policy Review Panel. The Panel included senior members of the medical profession and its role was to recommend ways for ensuring an affordable medical indemnity insurance system.

At the same time, the Government addressed doctors’ more immediate concerns by introducing a moratorium on the IBNR contributions. It capped them at $1,000 per annum for the 18 months from 1 July 2003 to 31 December 2004.

The Medical Indemnity Policy Review Panel reported to the Prime Minister on 10 December last year and the Government has largely adopted its recommendations. These include:

• reducing the High Cost Claims Scheme threshold further to $300,000;

• introducing a new, broader based Premium Support Scheme to replace the Medical In-
Under the Premium Support Scheme more doctors will be assisted with their medical indemnity costs than under the Medical Indemnity Scheme;

- replacing the IBNR levy with UMP support arrangements; and
- establishing a Run-off Reinsurance Vehicle to provide free run-off cover to certain groups of doctors when they have left the medical workforce.

Through these extra measures—added to those announced earlier—the Government will now contribute a combined total of some $620 million over the next four years to meet medical indemnity claims.

This legislation will give effect to the UMP support payment arrangements and provide a broad framework for the Premium Support Scheme.

I propose to introduce additional legislation later in the year to implement the Run-off Reinsurance Vehicle. Details of that scheme are currently being developed in consultation with the medical profession and the insurance industry.

The new UMP support payment will replace the present IBNR contribution.

Under the previous arrangements the IBNR contribution was specifically linked to doctors’ past risk profile, irrespective of their present capacity to pay. The contributions were structured in this way after consultation with the medical profession. However, when the first IBNR contribution notices were sent out, it became clear that this approach had led to significant anomalies.

The Government now proposes to make changes to the way in which it requires UMP members to contribute to the cost of meeting UMP’s unfunded IBNRs. Doctors with an IBNR liability will still have to make a contribution which will now be more affordable. Importantly, the Government will continue to meet the cost of funding UMP’s unfunded IBNR claims accrued to 30 June 2002.

During the medical indemnity review doctors made it clear to Panel members that they wanted a single billing transaction for all of their medical indemnity costs. Today’s legislation will make this possible. The Government is now working with the insurers to ensure that practitioners will be able to pay all of their indemnity costs including the UMP support payment and to receive a benefit, if applicable, under the new Premium Support Scheme in the one transaction. This legislation will also amend the Medical Indemnity Act 2002 to provide a framework for the Premium Support Scheme arrangements. The Government proposes to administer the details of the Premium Support Scheme by way of contracts with medical indemnity insurers. In this way it will be able to achieve its objectives of:

- broadening financial assistance to doctors so that where a doctor’s medical indemnity premiums, together with any UMP support payment, exceed 7.5% of gross private medical income 80 per cent of these extra costs will be met by the Government—irrespective of the doctor’s craft group;
- increasing support for procedural GPs working in rural areas by funding 75% of the difference between premiums for these doctors and those
for non-procedural GPs in similar circumstances; and

- providing Premium Support Scheme assistance to eligible doctors automatically through their insurers—with no separate application to government now required.

The Premium Support Scheme will come into full operation on 1 July 2004, with transitional arrangements to offer an equivalent level of assistance to insurers for the six months beginning 1 January 2004. Arrangements will be put in place to ensure that doctors currently receiving support under the current Medical Indemnity Subsidy Scheme will receive no less support under the new arrangements.

I believe that this legislation, in conjunction with the Government’s previous legislation, will provide greater certainty and reduced medical indemnity costs for doctors.

The Australian Government is committed to reducing medical indemnity costs for doctors and maintaining services but cannot achieve these outcomes alone. It will continue to work with the states and with medical organisations to achieve fairer premiums for doctors and fair outcomes for litigants.

The Government will continue to work closely with State and Territory Governments to implement tort reform.

I know that doctors are committed to the continuing improvement of risk management in their practice. Over time their efforts will also contribute to the reduction in medical indemnity costs for the profession.

MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION AMENDMENT BILL 2004

This Bill amends the Medical Indemnity (IBNR Indemnity) Contribution Act 2002 to give effect to the UMP support payments announced on 17 December 2003.

CUSTOMS TARIFF AMENDMENT (PARAQUAT DICHLORIDE) BILL 2004

The Customs Tariff Amendment (Paraquat Dichloride) Bill 2004 contains amendments to the Customs Tariff Act 1995. These amendments were previously tabled in Customs Tariff Proposal No. 1 (2003) and now require incorporation in the Customs Tariff Act.

The amendments contained in the bill specify that subheading 2933.39.00 in Chapter 29 includes the chemical paraquat dichloride containing an emetic added for safety reasons. This chemical is commonly used as a herbicide.

By enabling the inclusion of paraquat dichloride with an added emetic in subheading 2933.39.00, the same duty outcome of free is achieved as for paraquat dichloride that contains other allowable safety measures such as anti-dusting agents.

I commend the bill.

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

Ordered that the Customs Tariff Amendment (Paraquat Dichloride) Bill 2004 be listed on the Notice Paper as a separate order of the day.

COMMITTEES

Legal and Constitutional References Committee
Report

Senator BOLKUS (South Australia) (4.51 p.m.)—I present the report of the Senate Legal and Constitutional References Committee on the State Elections (One Vote, One Value) Bill 2001 [2002], together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator BOLKUS—I move:
That the Senate take note of the report.

This is another one of those processes where I think Senate committee deliberations and consideration of legislation have proved valuable, and its deliberations on this bill
will be quite valuable to this bill’s further progress in this place. The bill proposes that all electorates throughout Australia comprise as closely as possible equal numbers of electors. The specific aim of the bill is to bring Western Australian electoral law into line with the rest of Australia by ensuring that the principle of one vote, one value is enshrined in both houses of the Western Australian parliament. The committee was assisted in its considerations not just by the secretariat, particularly by Julie Dennett of the secretariat, but also by a whole range of experienced and well-qualified submitters from across the country.

The committee’s recommendations endorse the principle of one vote, one value that the bill seeks to implement. However, the committee’s deliberations did find quite a number of fundamental technical and constitutional problems in the bill. We recommend in a bipartisan approach that consideration be given to one of the following options as an alternative to the mechanism proposed in the legislation. Option 1 is a redrafting of the bill to express the principle in generality. This would effectively implement in Commonwealth legislation Australia’s obligations under the ICCPR in relation to universal and equal suffrage. Option 2 is to include in broader Commonwealth legislation the principle that enshrines human rights under the ICCPR generally.

The committee also found that the proposed acceptable variation in the legislation for electorate sizes should not be 15 per cent, but should be no more than 10 per cent. We make a bipartisan recommendation in that respect as well. We also make a bipartisan recommendation that any future legislation of this nature should have a restriction on judicial review in relation to the practical operation of electoral equality.

I do not wish to hold the Senate up too long on this legislation. I do need to say, however, that the bill is a private senator’s bill introduced by Senator Andrew Murray of the Australian Democrats. It intends to resolve the problem of malapportionment in Australia by proposing that all electorates in every jurisdiction comprise as closely as possible equal numbers of electors. As I said earlier, the origin of this legislation draws on the experience in the Western Australian parliament where the WA government did try to rectify a malapportionment situation in that state. That process did not achieve the outcome desired by the Western Australian government, and the legislation there was not accepted by the courts in that state. As a consequence, there was a broader approach taken by Senator Murray in proposing this legislation.

In our considerations we had to take into account that legislation from a national parliament needs to be general in its application, not just in terms of some of the potential constitutional problems it might have but particularly in terms of the application across the states. We are driven by the imperative in the Constitution that ensures that legislation will prevail across the states with equal effect. As I said, the committee in a bipartisan approach support in principle the proposed legislation. We did find technical flaws in the bill—flaws that went to the definition of the quota of electors for each electorate, flaws that went to the timing of the redistribution process and flaws that essentially arose from the proposal in the legislation to embrace judicial review. I also mentioned earlier the acceptable variation. Fifteen per cent was proposed by Senator Murray, but a maximum of 10 per cent is proposed by the committee.

The implications of the bill in jurisdictions other than Western Australia are canvassed extensively in the report. I do not need to go into that. But, as well as those problems, we
also had to consider problems which arise from the operation of the Australian Constitution. Those constitutional issues go to questions of the detail of the proposed legislation and also to the application of the external affairs powers that this legislation proposes to exercise and the extent of the capacity of the national parliament to exercise that power. As well as that, there is the question of implied immunity contained in section 106 of the Australian Constitution for states. We do make some comments about the application of that particular constitutional provision. The committee looked at alternatives to what was being proposed by the legislation. As I mentioned earlier, we have identified two possible options which the Senate would need to take into account if this legislation were to continue in an amended form.

We had to canvass whether this issue should be resolved within Western Australia. The committee felt that this issue was one of national concern. As a consequence, we support in a bipartisan way the introduction of legislation to embrace the principle as a broad principle. We are also cognisant of the fact that the Hon. Jim McGinty, the Attorney-General of WA, in evidence before the committee stated:

... the Western Australian state parliament is incapable of reforming itself, and that is why I strongly support this legislation.

There are fundamental principles involved here. I think it has been very useful for a Senate committee to go through the details of the legislation, to canvass how the principle could work in practice and what some of the pitfalls would be, and to define a way ahead for this legislation. As I said at the start, I am sure the process this committee has gone through is valuable for the consideration of this legislation, and I anticipate it will form a pretty important foundation for the consideration of any subsequent legislation to bring this into effect.

Senator MURRAY (Western Australia) (4.59 p.m.)—I rise today to speak to the motion relating to the tabling of the Senate Legal and Constitutional References Committee report on the inquiry into State Elections (One Vote, One Value) Bill 2001 [2002]. This committee report once again confirms the value of the Senate legislative review process. I thank the chair, the deputy chair, the committee and the secretariat for their efforts. I agree with the report and welcome its findings. The bill was designed not just to enshrine in Australian law the most fundamental of universal political rights and principles but, as footnote 7 in chapter 2 makes clear, to try and implement the recommendations of the Western Australian Commission on Government 1995-96, established by the Court Liberal government. The route proposed by the committee will make the bill far less subject to challenge or difficulty, and I intend to have the bill reworked accordingly. As I and others have said many times before, representation is one of the most central features of a parliamentary democracy. Australia is a signatory to the International Covenant on Civil and Political Rights, article 25(b) of which confers the right:

To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage...

Professor George Williams made a particularly important observation about the issue of effective representation. He said:

... sometimes people contrast equality of voting power with equality of representation. But if you look at the movement around the world, the days of suggesting that special interests should be accommodated through different levels of voting power are largely gone in other comparable nations. The reasons for that are many. One of them simply is that, if you do make special interests and build them into such a system, it is almost impossible to determine fairly what those special interests should be. If you are dealing with the notion of the difficulty of representing people,
geography is obviously relevant to that. But equally, given today’s multicultural Australian society, you might say someone with an inner city electorate, with great difficulties of language with a largely migrant community, might have even greater problems in representing and understanding the wishes of their voters.

The road to democracy has always been hard, with trenchant resistance at every step, and in this case it is no different. Conservatives are notoriously antilibertarian on this front. The history of democracy is a history of combating barriers to equality. While the theory of democracy prescribes rule and participation by the people, the practice of democracy has at times been the rule of men but not women, of European Australians but not Aborigines, and of property owners but not itinerants or tenants. These are battles for the franchise that have been won—but not easily. Battles for equality are never easy because those who benefit from inequality will defend the indefensible. Therefore, equality must become a universal principle, one that is of supreme importance. The alternative is discrimination, which usually descends into disadvantage. Ultimately, the principle that in a democracy all adults are entitled to one vote of equal weight must triumph over any vested interests.

Western Australia’s electoral history records a slow and incomplete process of democratisation. Women were given the vote in 1899, although there was still a general exclusion of ‘Aboriginal natives of Australia, Africa or Asia’. It was not until 1962 that Aborigines won the right to vote in Western Australia’s Legislative Assembly elections. From 1870 there was a property franchise, which restricted voting to the male head of the family and permitted plural voting. Under plural voting, each voter could vote not only in the electorate in which he—‘he’ being the operative word—lived but also in any electorate in which he owned property of a certain value. Plural voting was abolished in the legislative assembly in 1904 but was not abolished until 60 years later, in 1963, for legislative council elections.

It is an interesting parallel that current moves to democratis Western Australia’s state electoral system is a study in inequality. In the legislative assembly in the metropolitan area, Wanneroo has 45,731 electors and Girrawheen has 22,866 electors. The voter in Girrawheen has a vote worth twice the value of that of his or her city counterpart in Wanneroo. In the non-metropolitan area, Dawesville has 19,612 electors and Eyre has 8,964 electors. The Eyre voter has a vote value of over twice that of a voter in Dawesville. The voting power of electors in Eyre is now about five times that of electors in Wanneroo. The extent of malapportionment on this scale is truly extravagant. This is an affront to democracy. It offends the basic one vote, one value principle. The Hon. Gough Whitlam, in his speech at the ANU law faculty dinner on 11 November 2000, noted:

Nowhere in the English-speaking world are there such unconscionable divergences as in the WA Parliament. It has only one redeeming feature; all members of the Legislative Council are elected for the same four-year fixed term. WA democracy is a monstrous misnomer.

I welcome the Senate committee’s strong support for the policy behind the bill and its belief that the principle of one vote, one value is a fundamental political right that should be firmly entrenched in all jurisdictions in Australia. We Democrats also welcome the constructive criticisms of the inherent problems in the bill, and I say again that those problems were largely due to trying to implement the recommendations of the Court Liberal government’s Western Australian Commission on Government 1995-96.
However, we can now put that aside and concentrate instead on implementing the fundamental principles espoused in the bill.

Australia is an advanced democracy and we have an obligation in international law to ensure that basic standards of democracy are observed throughout Australia, as evidenced by article 25. Australia has voluntarily accepted the obligations under the ICCPR, and clearly under international law that places a duty upon the Australian government to implement article 25 of that instrument. If you look at the general comment that goes with that instrument, you see that it does establish the fact that the instrument goes to the idea of one vote, one value.

Given that it is the Liberal Party in Western Australia holding up the application of the principles of this bill, it is fascinating to see the Liberals in the federal government using article 25 as a motivating argument with respect to the government’s Norfolk Island Amendment Bill 2003. The minister and the joint standing committee, chaired by Senator Lightfoot, have expressed concern that the existing electoral qualifications on Norfolk Island do not meet Australia’s international obligations under article 25 of the International Covenant on Civil and Political Rights, which provides that all citizens must have reasonable access to vote, to be elected and to take part in public affairs. The difference between that and some of the very extravagant and over-the-top expressions I have heard on this issue is quite marked. I strongly urge the government to support this bill’s endeavour, as to reject its principles would go against the most fundamental of their obligations to the Australian people.

I conclude by quoting some remarks that relate to the views of the Western Australia Attorney-General, the Hon. Jim McGinty. Paragraph 3.76 of the committee report states:

The Committee also heard evidence in relation to the added complication that state referendum results are not binding in WA. Such a situation could arguably give greater credibility to the Commonwealth legislating to resolve the issue since, even if it were put to a referendum of the people and the result was “yes”, the law would not be changed. The absolute majority consent of the two houses of the WA Parliament would be necessary to effect the change, in addition to the referendum result. As the Hon Jim McGinty noted in evidence at the hearing:

There is a Referendums Act in Western Australia. That requires that the parliament pass a law to submit a question to the people. Interestingly the results of that referendum, unlike a referendum to change the Commonwealth Constitution, are not binding. If a referendum were conducted on this question, for instance, that would not change the law. The parliament would in the light of that referendum need to pass a law to give effect to this issue, and it would need to be passed in accordance with the Constitution. So I think the answer to your question is that there is a provision for a referendum to be conducted but that does not of itself change the law.

There is a real point to that, I would suggest. If the Western Australia government goes to the people and gets the people’s approval for this change, the change will still not occur. That is the ultimate denial of the sovereignty of the people.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.09 p.m.)—First of all I acknowledge the work of the Senate Legal and Constitutional Legislation Committee for this report into Senator Murray’s State Elections (One Vote, One Value) Bill 2001 [2002]. As I said when Senator Murray’s bill was being debated in the Senate last year, the opposition strongly agrees with the principle of one vote, one value. Indeed, the strength of the principle is in part its simplicity. The concept of one vote, one value simply means that each person should have just the one vote, that each person’s vote should be equal in }
value to every other person’s vote and, importantly, that numbers of electors within electorates should as nearly as possible be equal.

The opposition strongly believes the weight of a citizen’s vote cannot be made to depend on where they live. Population is, of necessity, the starting point for consideration and should be the controlling criterion for determining electoral boundaries. It is widely known that the Labor Party has championed the fight for equality of representation in parliament since its earliest days. In fact Labor has stood for proportionality in electoral representation and the adherence to the principle of one vote, one value for over 100 years. The 1899 Labor Party platform supported universal suffrage and included a straightforward commitment to what was described then as ‘one adult, one vote’. This was not only a commitment to the abolition of the property franchise and plural voting but also to redressing the gross imbalance between population and the distribution of parliamentary representation.

Over the years a number of people in Australian politics have led the fight for one vote, one value. The most prominent of those is undoubtedly Gough Whitlam. Gough has stood like an absolute colossus in the fight for one vote, one value for over 100 years. The 1899 Labor Party platform supported universal suffrage and included a straightforward commitment to what was described then as ‘one adult, one vote’. This was not only a commitment to the abolition of the property franchise and plural voting but also to redressing the gross imbalance between population and the distribution of parliamentary representation.

I remind the Senate about the Dunstan government reforms of the 1970s. They were opposed by the conservatives. They were only passed by the South Australian upper house on the votes of the Liberal movement—a splinter group that had split at that time from the Liberal and Country League. There is no better current day example of the Liberal Party’s opposition to the simple democratic principle of one vote, one value than their trenchant opposition to democratising the parliament in Western Australia. Nothing speaks louder. This speaks volumes for what the Liberal Party are on about.
Senator Murray’s bill, which was proposed to implement article 25 of the International Covenant on Civil and Political Rights so that elections for state legislature should be by equal suffrage, was very well motivated. I have said that before, and I say it again. While one vote, one value is a simple principle—as I have said, and as most reasonable people would accept—this committee report shows that drafting a bill is not an easy task. That has certainly been demonstrated. One vote, one value is too important a principle to get wrong when we implement it in legislation, and I believe the committee report that we are debating today will significantly assist the debate and the process. Like an Australian republic is inevitable, I would like to think that the end of malapportionment in Western Australia is inevitable at some point.

There is momentum. I think there is a growing political will to fix the problem, but it will continue to be difficult while the conservative parties oppose this fundamental democratic principle. I want to say in conclusion—because I think other senators may wish to address this report—that the opposition will work with other interested parties to progress the recommendations that are contained in this report, in an attempt to enshrine in law the fundamentally important principle of one vote, one value.

Senator BROWN (Tasmania) (5.17 p.m.)—I want to flag that I and the Australian Greens support the principle of one person, one vote, one value, in whatever jurisdiction. It follows from that that we also support the thrust of what Senator Murray is doing here and the move towards making sure that that applies in all jurisdictions. I look forward to renewed legislation coming into the Senate. We have the difficulty, which Senator Faulkner has just outlined, of the need for that legislation to go through the House of Representatives. There we are faced with the coalition parties having the majority. It is inevitable that the principle of one person, one vote, one value will extend to every corner of Australia—and hopefully it will extend to every corner of the planet. I will be supporting that process wherever I can.

Question agreed to.

CRIMINAL CODE AMENDMENT (TERRORIST ORGANISATIONS) BILL 2003
In Committee

The TEMPORARY CHAIRMAN (Senator Bolkus)—The committee is considering Criminal Code Amendment (Terrorist Organisations) Bill 2003 and government amendments (1) and (2) moved by Senator Ellison.

Senator BROWN (Tasmania) (5.20 p.m.)—I spoke about the opposition of the Greens to the Criminal Code Amendment (Terrorist Organisations) Bill 2003 earlier in the day, but I now want to seek some information from the government—and from the opposition insofar as it cares to explain its change from the opposition it had previously to this legislation, along with the Greens and the Democrats, to its support for the legislation now. The argument seems to be—and it came from the honourable Mr McClelland, the shadow Attorney-General—that there has been a robust or substantial change to the legislation through the safeguards that have come in the form of the government amendments. In looking at these so-called ‘robust’ assurances, I want to ask the minister some questions that I think will discover that they are neither robust nor real.

The first amendment states that before the Governor-General makes a regulation specifying that an organisation be banned—in
other words, before the Attorney-General bans an organisation—the minister, that is the Attorney-General, must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. I ask the minister or, indeed, the Labor opposition: where in this legislation is it in any way binding upon the Attorney-General to take the least bit of notice of what the Leader of the Opposition’s response is? Let us go back 50 years to when the Communist Party was being proscribed by the Attorney-General through the mechanism of the day and the Labor Party was robustly opposing that—as Doc Evatt would be doing were he alive today. What is in this legislation that says that the Attorney-General has to take the least bit of notice of the opposition’s point of view? Where does it say that the opposition leader has to be in agreement? If it does not say that, why is that not in this legislation?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.22 p.m.)—The amendment clearly says that the Leader of the Opposition must be briefed, not that the Leader of the Opposition should consent—that is something quite different. The basis for this is that the Leader of the Opposition should be fully briefed in order to put him or her, and the opposition accordingly, in a position where they can then determine their position and make an informed decision. That is where you have the matter determined: in the parliament, by a policy statement or by a decision of the opposition. It is up to the opposition then to take whatever action they think appropriate, be it agreement or disagreement—voting for it in the House or not voting for it in the House. This only goes to the briefing of the Leader of the Opposition, as we have it in the ASIO legislation. It provides for a briefing of the Leader of the Opposition so that the opposition and the Leader of the Opposition can make an informed choice. There is no aspect of the Leader of the Opposition having to agree. That is something quite different—and the government believes that is something which the opposition can determine elsewhere, such as the debate or otherwise in the House or the Senate.

Senator BROWN (Tasmania) (5.24 p.m.)—So we find that the idea of a ‘robust safeguard’, as it was described by the shadow Attorney-General, Robert McClelland, yesterday, is in fact a figment of your imagination—there is no robust safeguard here at all. There is a phone call—off the public record, one presumes, because the Labor spokesperson is not going to forewarn an organisation that is about to be closed—but that is all it is. There is no safeguard in that amendment. It is a nothing amendment.

Let us move on to the next amendment, which I will paraphrase because it is quite a long amendment. It says that, if an organisation has been listed as a terrorist organisation and they have good reason for objecting to that listing, they can write to the Attorney-General to be de-listed. It says in the active clause of this so-called ‘robust safeguard’—I am using Labor’s words there—that the minister must consider the de-listing application. To put that in other words, the minister has to read this application. Is there anything more to it than that? Is there anything in this which is a ‘robust safeguard’ if an organisation feels it has been listed erroneously or for political reasons? Where does it say here that in those circumstances the minister must de-list the organisation from being prohibited—in other words, give it back its rights? I know the minister will go on to say that the organisation could appeal against that. I am looking for the ‘robust safeguards’ in this amendment—the safeguards that the Labor Party says are robust—but I cannot see them. Can the minister tell me where they exist in the second amendment before we move on?
Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.26 p.m.)—As I said earlier, we believe that in the previous bill it was open for anyone to make an application in relation to de-listing but this bill spells it out. It is not just restricted to the organisation: an organisation or an individual can make an application for de-listing. So this amendment widens the ability for an application to be made by those people whom I have described. Of course that is a safeguard because it throws it open, if you like, for more people in the community to make an application for de-listing. The amendment says that ‘the minister must consider the de-listing application’. That is also a further aspect of the safeguard: if you make the application, the minister must entertain that application and make a decision. I would have thought that that would have been something that the Greens and others would have welcomed. The amendment expands the pool of people who can make an application and, what is more, stipulates that the application must be considered by the minister.

Senator BROWN (Tasmania) (5.28 p.m.)—What nonsense. It just says that the minister has to read a letter. There is no safeguard in here and there is nothing robust about it, as Mr McClelland would have it. We then move on to what is effectively the third measure that Labor wrought out of the government before it caved in on this legislation—that is, that once an organisation is listed it can be reviewed by the joint parliamentary committee. I ask the minister: besides the joint parliamentary committee reporting its findings to the parliament—and it would not be doing its job if it did not do that anyway—what force of ‘robust safeguard’ nature, in terms of overturning a determined Attorney-General who has listed an organisation for political purposes, does this have in preventing that action from happening? Is this just a feed into informing the parliament, which can disallow the regulation? The whole point of the argument that Labor has held for two years—and which I, on behalf of the Australian Greens, have supported—has been that the Attorney-General should not be able to arbitrarily list, or ban, an organisation in Australia without first convincing the parliament that that is a reasonable thing to do.

I have quoted Labor’s view on this last year, and I may do so again. I am sure Senator Faulkner will remember it. The legislation simply gives the Howard government, for example, the ability to ban organisations for political reasons. There is no safeguard to prevent that occurring. The best that the parliament can do some time later—and it may be months before it gets the opportunity—is to restore the organisation, but not until after members have been jailed, funds have been seized and offices and so on have been closed down. I reiterate that this is the job of parliament. This is a safeguard in a democracy that you do not give to the executive. This legislation, now supported by Labor for reasons that are not apparent whatsoever, has had no substantial changes made to it. There is nothing in here that did not exist before. Labor now supports this legislation for reasons that are not apparent whatsoever, has had no substantial changes made to it. There is nothing in here that did not exist before. Labor now supports this legislation for reasons that escape one—unless you take the point of view that Attorney-General Ruddock and Mr Howard now take, which is that Labor is caving in on the way to an election.

The arbitrary power of the Attorney-General to ban organisations in Australia has been taken away from the parliament. I want to hear an argument as to why that should happen. Why should the Australian Greens change their point of view? There is nothing here to justify it. Why should we not maintain that this is such an important issue that it should be brought before the parliament from the outset and should not leave parliament as some sort of backstop after the dam-
age has been done if an organisation is wronged by a government which seeks a political advantage from banning such an organisation? Let me say again: under this legislation the Menzies government would have banned the Communist Party in Australia. Let us not be fooled about the potential for political misuse of this legislation given circumstances where it will advantage an incumbent government. The legislation states:

… the Parliamentary Joint Committee on ASIO, ASIS and DSD may:

(a) review the regulation as soon as possible after the making of the regulation …

It is too late after an organisation has been banned. I presume that committee is going to ask those spy organisations what information they have. When it does, it might remember the information coming from those spy organisations to the Howard government in the run-up to the Iraq war. It is now known to have been wrong—not just materially wrong but fundamentally wrong. It misled the nation, aided and abetted by the spin put on it by the Prime Minister in sending our defence personnel to war.

The parliament should have the authority of determining whether to go to war; it should not be left to the executive. The Greens believe that you should not be able to ban organisations in this country without the authority of parliament. I cannot believe that, after the history of the last century, we have the Labor Party caving in and saying, ‘We’ll hand this authority across to Prime Minister Howard, or some future Prime Minister, and his executive so that behind closed doors they will be able to ban organisations and jail individuals who are associated with them.’ Once the ban comes in then people who are members of that organisation can be jailed—not because they are terrorists, but because they are members of the organisation. Then the funds are frozen and the whole structure and establishment of an organisation can be shut down, as indeed the Communist Party would have been shut down in 1951 had this legislative tool been available to the then government. This is political expediency by the government; it is wedge politics succeeding. The Labor Party has caved into it and the nation will be the poorer for it.

I guess Senator Greig will agree with me that this again highlights the need for the alternative parties in this parliament. It is left to us to defend the democratic strengths of our history, our Constitution and parliamentary authority, which should be second to none. But this measure relegates parliamentary authority to the executive. That is what is so materially wrong with the drift in governance in Australia and other democracies as we go through the early years of this century. A robust democracy is just that: it is the representatives of the people being able to make determinations on matters of enormous importance to the community. And you do not hand that across, particularly when you have a bicameral system established, as we have, by the founding individuals specifically to keep a halter on the excesses of the executive.

Senator Faulkner—That’s a good one, the founding individuals.

Senator BROWN—I am being taken up there on saying—

Senator Faulkner—No, you are using non-sexist terminology.

Senator BROWN—Yes. I was saying in Adelaide just the other day that Catherine Helen Spence is the founding mother. She gets left out all the time because she did not happen to be on a boat at some particular time. So yes, the founding individuals—because there are more than just the founding fathers involved.

CHAMBER
The TEMPORARY CHAIRMAN (Senator Bolkus)—Are you satisfied, Senator Faulkner?

Senator Faulkner—I think you can more than comfortably use ‘founding fathers’ because, as you know, they basically were blokes. But I am not going to argue with you about your use of ‘founding individuals’.

The TEMPORARY CHAIRMAN—Senator Faulkner, you are out of order.

Senator Brown—I will be interested to hear Senator Faulkner get up and explain where the robust safeguards are on this.

Senator Faulkner interjecting—

The TEMPORARY CHAIRMAN—You can both have a chat outside. Senator Brown, you have the call. Please address your remarks through the chair.

Senator Brown—I will at some other time defend my comment on the founding individuals, if you like, and the determination that Catherine Helen Spence not be left out of our history by force of an American phrase brought into this country. Thank you, Chair, for bringing me back on to the matter at hand. What is appalling here is that the executive is being handed the power to ban organisations in Australia without the authority of the parliament. That is simply what is wrong with this, and I cannot believe the Labor Party is doing that.

Senator Greig—There are two things I would like to respond to. Firstly, in Senator Faulkner’s earlier contribution, he had a go at Senator Brown and a de facto go at me, I suppose, or my party.

Senator Faulkner interjecting—

The TEMPORARY CHAIRMAN (Senator Bolkus)—Order, Senator Faulkner!

Senator Greig—It was significant enough to have caused concern. Senator Faulkner made the point that, when parliament was recalled late last year—an extraordinary recall—to address the question of the prohibition of Hamas and LeT, there were no voices raised against that. A suggestion in what Senator Faulkner was saying was that somehow that is contradictory in terms of what is happening today. It is true that we on the crossbench endorsed that particular bill; but it is misleading too, because the Democrats very strongly opposed the process. We made a particular point of talking about what we believed to be the insincere politics behind that—not to mention the extraordinary cost and unnecessary recall of parliament. As far as I know, despite the apparent urgency that was argued by the government, there has been no investigation, detention or prosecution of any Australians allegedly involved in those organisations. That begs the question: why the haste? My belief is that that was not about the process of reform but about the politics of fear, and I see that happening again here today.

I would like to raise a particular point with the minister. The minister has tried to assure the chamber this afternoon that there are robust safeguards in the legislation. He made a point of saying that, once listed, an organisation could be reviewed by the parliamentary committee—that is, the Parliamentary Joint Committee on ASIO, ASIS and DSD. But I would ask some questions and make some points on that. Firstly, is it not the case that only coalition and Labor Party members constitute that committee, that it has only major party representation? Secondly, is it not the case that that committee is specifically constituted to ensure that the government at all times has a majority? Where is the robust safeguard in the purview—your words—of a committee which does not contain representation from all parliamentary parties and which is clearly in the control of the government and therefore the executive? I submit that that is not a robust safeguard and
and that, as a result—to follow from Senator Brown’s question—we now have the scenario that, far from Labor Party assurances and Labor Party confidence that this is a better system before us today, ultimately we have a system where the shadow Attorney is briefed. He does not have to consent, he does not have to agree: he is merely told of the listing. There is no review, appeal or objection. Also, the apparent robust safeguard—the follow-up to that, which the minister would have us believe is there for the parliament’s and the community’s assurance—is nothing of the sort. It does not contain full parliamentary representation, and it is within the control of the government and therefore the Prime Minister.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.42 p.m.)—I have been asked a question in relation to the joint parliamentary committee which has responsibility for the review of ASIO, ASIS and DSD. The number of committee members is seven. It is made up of coalition members and members from the opposition, including senators. As I understand it, the legislation stipulates that they shall be drawn from the House of Representatives and the Senate—four from the House of Representatives and three from the Senate. The Prime Minister appoints those from the House of Representatives and the Leader of the Government in the Senate appoints those from the Senate. There is a provision which deals with the fact that those people should reflect the make-up of the parliament in relation to the parties they represent. I think that broadly describes it, and that is how it is done. I understand that Senator Greig has an amendment which seeks to expand the committee membership from seven to nine. Perhaps that can be debated when his amendment is put.

Senator BROWN (Tasmania) (5.43 p.m.)—I would still like an explanation from the opposition about the change in its position since last year. I think we have fairly clearly established that no robust safeguard has been built in since then. There are a series of paper changes which involve phone calls, applications and the requirement on the minister to read a letter, but there is absolutely nothing in here that fetters at all the decision by the Attorney-General to ban an organisation. It would be helpful—and I think it is important for the record—if the Labor Party could explain why it has changed its position. It is obviously going to make a difference to the outcome. Why has Labor made this change in the last nine months and why has it proposed the three amendments which, as I say, in no way fetter the Attorney-General, besides obliging him or her to take notice of a letter or two. I note that just last year Senator Faulkner said:

The government’s proposals to erode our freedoms and our rights will ultimately erode our security as well. For this reason, we do not accept and will not accept government’s executive prescription bill. We will not accept a regime of secret proscriptions, of decisions in closed rooms, of such significant and potentially destructive power in the hands of one person and one person alone. To have that kind of power exercised by one person in secret, particularly a member of a government executive ... is not acceptable in a democratic society and it should never be allowed on the statute books.

They are strong words, and I agree with them. I think they apply to the current legislation. Maybe Senator Faulkner can explain now why a phone call which is non-binding on the Attorney-General or a requirement for the Attorney-General to read a delisting letter further down the line, of which he or she has to take no notice, or a review by a committee down the line makes any difference to the situation which pertained last year, where the parliamentary review of this matter was no longer up front—the parliament was not the check up front—and where the parliament is
left with a disallowance provision some weeks or months down the line, depending on when the Attorney-General decides to proscribe an organisation, after all the damage has been done if that proscription is unwarranted.

Nothing has changed except that we have moved closer to an election. I think the Labor Party is making a monumental mistake here. Senator Faulkner might comment on this in anticipation but the problem is that this Attorney-General—and we all know what he is like; if there is anything robust about him it is his determination to bring in some more wedge politics in the coming months—will bring in draconian legislation that truncates time-honoured rights of Australians in a democracy. He will tempt the Labor Party to go with him to put legislation into law in the run-up to an election. We are in a very dangerous political situation.

I think the Labor Party is underestimating the feelings of the Australian people on matters like this. I reiterate: we have extraordinarily strong laws to stop terrorism and to prohibit organisations which are terrorist organisations in this country. Already some hundreds have been subject to those laws over the years and a smaller number totally proscribed through parliamentary law. What is next? Will the Labor Party support the proposal now surfacing in Britain for secret trials for individuals or people accused of terrorism by a government? They will be held behind closed doors, the same as this legislation allows an Attorney-General behind closed doors to ban an organisation for reasons which do not surface into the public arena any more.

Is the Labor Party going to accept the French model, which the Attorney-General favours, of being able to detain people for up to two years with no charges while they are questioned? Is that next to come down the line? I think it is very likely. Is the Labor Party going to support that? I presume a defence from the Labor Party will be that that is hypothetical. I do not think so. I think the Attorney-General is now in a process of politicising the debate about securing Australians from terrorism in a duplicitous fashion where the politicising of it is to help secure the government another term in office. I think we will see a different form of fear and we will see a lot more of the ‘soft on terrorism’ epithet, which is used against the opposition and anybody else who stands up against legislation like this.

It harks back to the McCarthyist period, where anybody who spoke about equality in society or debated it or discussed matters of social equality in a way which could be said to be communist was effectively deprived of their citizenship in the United States. We look back on that now with horror. The check against that is the parliament, and I think the check against that has to be that we have to revisit that history to make sure we are not leading ourselves into another period like that. The worst thing that could happen here is for the opposition to support the government because it is frightened of the government’s power to manipulate public opinion on this matter. It is up to the opposition to go out there and say to the public: ‘We are on your side. We are defending time-honoured rights in this country.’ As so many people have said, the worst thing we can do as far as terrorism is concerned is to deprive ourselves of the liberties that terrorists seek to deprive us of because we do not stand in defence of our democratic ideals in this egalitarian country. So there is the question to the opposition: at what stage are you going to make the next stand, now you have caved in on this matter where you should be making a stand? I ask the Minister for Justice and Customs, Senator Ellison: is the government considering bringing further legisla-
tion into this parliament in the coming months? If so, would the minister care to say what that legislation is?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.51 p.m.)—Let me deal briefly with some of the issues that have been raised in the Committee of the Whole by Senator Brown. I can inform the committee that I do not intend to make a great number of speeches in this debate, but I have been invited to address the chamber by Senator Brown. It was a generous and courteous invitation, so I will accede to it. Senator Brown asks: is the Labor Party going to support future legislation that will be introduced by the government? I cannot answer that question. I do not know what future legislation the government is planning to introduce, but I know the principle that the opposition applies to these matters when such legislation is introduced. It is quite simple. It has governed our approach to all the antiterrorism legislation. We will judge the legislation on its merits. You can ask Senator Ellison what the government’s plans are. I do not know what the government’s plans are. In the time when I was the shadow minister responsible for these matters in the dim, dark days of yesterday, in negotiations with the government I was certainly not told of future legislation and to my knowledge my colleagues were not. You should address that to the government. But rest assured you can be absolutely confident and depend on the fact that the opposition, as it always does, will treat any such legislation on its merits.

Senator Brown wonders what has changed. What is the difference between the proposition we have before the chamber now and when it was first rejected by the Senate? There is a massive difference because, when the legislation was first introduced, it did not contain a capacity for this chamber or the House of Representatives to disallow a determination by executive government of an individual listing of a terrorist organisation. It did not contain a capacity for such a determination to be disallowed. It was not there. Of course, what has happened since that time—in part because of the initiative that the opposition has taken on the external terrorist wing of the Hezbollah organisation, which nobody that I am aware of, either inside this parliament or outside the parliament, doubts is a terrorist organisation—is that the opposition proposed to government that we have parliamentary proscription of such an organisation. Everyone in both chambers of the Australian parliament supported the parliamentary proscription—Senator Brown did, the Australian Democrats did and opposition and government members in both houses did. No-one has had an argument about that, just as we also had a unanimous view in the Australian parliament about the parliament proscription of the terrorist organisation associated with Hamas, the terrorist wing of Hamas and the organisation Lashkar-e-Taiba. Again, parliamentary proscription was agreed to unanimously by both houses of the Australian parliament.

The effect of the current legislation—the current process that we are examining—is that there is now also a capacity for either house of the Australian parliament to disallow a determination of executive government, if the parliament finds it is not satisfied with such a determination. Senator Brown says that he does not think that the amendments to this bill make a difference. He does not think it matters that before a listing of an organisation the Attorney-General must brief the Leader of the Opposition. Senator Brown is entitled to his view, as are all senators. But this safeguard will be accompanied by an additional requirement that the Commonwealth has to consult with the states and territories before making a regulation. The condition will form part of the intergovernmen-
ural agreement which is required to enable the Commonwealth to enact this legislation. Together, those measures will ensure that proscription decisions cannot be made in secret by a single member of the executive government, but they will be subject to appropriate prior consultation with the Leader of the Opposition and of course state and territory governments, be they Labor or non-Labor. We welcome the fact that the government has moved to support the opposition’s proposal in this area.

I say to the chamber that, if the government abuses the provisions of this new law relating to the proscription of an organisation, as a result of the amendments that are just dismissed out of hand by Senator Brown, then the opposition, which would have been briefed on this matter—be it a Liberal, Labor or non-Labor opposition—could disallow those regulations effectively on day one after the parliament sits. That is what it means, Senator Brown. You may not consider that a significant safeguard. I think it is a major safeguard. It is a very significant advance and is a very different proposition from the one we dealt with earlier in the package of antiterrorism legislation in the middle of 2002.

There are additional amendments being proposed. Amendment (2) before us includes two items, excitingly called items (3) and (4) in the amendment that has been circulated. What do they mean? Item (3) means that included in this bill would be an item which imposes a specific obligation on the Attorney-General to consider an application by either an individual or an organisation to de-list an organisation which previously has been proscribed. Presently, there is no such obligation on the Attorney-General, which effectively would leave an individual or an organisation without remedy should the Attorney-General choose to ignore an application put forward in good faith. This amendment will ensure that an individual or an organisation dissatisfied with the Attorney-General’s consideration of the de-listing application will be able to seek judicial review, which is the remedy available in these circumstances under equivalent legislation in the United Kingdom and Canada. The absence of this mechanism from the Australian legislation was criticised by the Senate Legal and Constitutional Legislation Committee in its 2002 report. Unfortunately, at the time, the government in its usual sloppy fashion did not heed the recommendations of the committee. I welcome the fact—I am not too proud to say it—that the government has finally woken up on this particular matter. This amendment will provide for greater accountability of the Attorney-General for proscription decisions. The opposition will support it. It is a significant move in the right direction.

Then, of course, we move on to item (4) in amendment (2). That item will include in the bill a provision to give the parliamentary Joint Committee on ASIO, ASIS and DSD, which we always call the joint intelligence committee in here, a specific mandate to review listing regulations and to report to the Attorney-General and the parliament. One of the problems with the bill as it stands is that, whilst it preserves the power of each house of the parliament to disallow a regulation, it offers no means to the parliament to properly inform itself of the basis of a decision to list an organisation. Inevitably, such decisions draw on security and intelligence material that is available to government but not available, properly, to the parliament.

We can see vividly from the inquiry report on WMD in Iraq that both the gathering and the analysis of intelligence material, as well as the use made of it by the government—particularly a government like this one—may well be flawed. We say that the parliamentary joint intelligence committee, with what
are unique statutory powers in this parliament under the Intelligence Services Act and with what has been, I think it is fair to say, a professional and bipartisan approach by the committee to these security intelligence matters, is an appropriate body to review the basis of a listing decision and to provide an informed recommendation to the parliament about the merits of the decision.

Yes, we believe it is an important safeguard and, again, it is a significant step forward. It means that the committee would be required to report within the normal disallowance period of 15 sitting days and would extend the disallowance period by eight sitting days from the tabling of the report to ensure that the parliament has adequate time to consider the committee’s recommendations. Also, this amendment we are debating now will require the operation of this legislation to be reviewed by the parliamentary joint intelligence committee after three years. That is not a massive step forward but it is an important improvement to the proposed legislation.

These amendments will mean there will be greater accountability for proscription decisions. It will ensure that the executive remains at all times subject to the control of the parliament, which is what Senator Brown has always argued for. That has been his position and the position of Senator Greig from day one. Now that you have it, Senator Brown, you ought to stand up in your place and claim victory, even though it is the opposition that has delivered the victory for you. Why don’t you just get up and say that what you have argued for, and what the opposition and the Democrats have argued for, has been delivered, courtesy of the efforts of the opposition? Senator Brown, claim victory for once in your life! Don’t claim defeat. You have actually achieved your agenda and you should proudly get up in this chamber and say so. Don’t be backward in coming forward. You say so much in this chamber, Senator Brown; just once, be positive and claim a victory when you have had it.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Faulkner, you should address your remarks to the chair.

Senator FAULKNER—I am addressing Senator Brown through you, Mr Temporary Chairman.

The TEMPORARY CHAIRMAN—You are not doing that, Senator Faulkner.

Senator FAULKNER—I believe I was, but, through you, Mr Temporary Chairman, I am encouraging Senator Brown for once to acknowledge the very important gains made in relation to this legislation. We in the opposition have said all the way along the line that, when we debate this sort of legislation, it is about and ought to be about protecting Australia and Australians. That is the fundamental principle. We have always said that should be above party politics. I agree with you, Senator Brown, in relation to your commentary about this government. Do not descend to their sleazy levels. This is and should be above politics. That is the motivation of the opposition and that is why the opposition has been able to deliver on this issue. I suggest to the minor parties that they acknowledge those very important changes and acknowledge the fact that what we have argued for in this chamber has now been achieved. Claim victory, Senator Brown, and let us move on to the next item of business.

The TEMPORARY CHAIRMAN—Thank you, Senator Faulkner. And, now, Senator Brown to ‘claim victory’, I assume.

Senator BROWN (Tasmania) (6.06 p.m.)—Yes, Chair. I am always impressed by a great speech based on a false premise. The words of Senator Faulkner in saying what a victory this has been remind me of the words spoken in the last 24 hours or so by Labour peer Helena Kennedy QC in the United
Kingdom in responding to antiterrorism laws floated by David Blunkett, the Home Secretary, in which she said:

You suggest all kinds of outrageous and awful things because you get away with half of them ... But all of this is terrible and even half would be a disgrace.

What we are left with here is a disgrace being endorsed by Labor. Let me say this, too: Senator Faulkner—and I am impressed with his oratory—said that the big difference that has occurred here since 2002 is that now the parliament is able to redress a proscription because it will be a regulation and the regulation can be disallowed. As I said, that may be months down the line after all the damage has been done. But that was the situation that pertained in June last year.

So let me not do better than respond to the situation: we got the improvements. Let us claim the victory, as Senator Faulkner would have it, that there now has to be a regulation which the parliament can disallow about an organisation being proscribed—let me use Senator Faulkner’s words ‘after the event’ because I cannot do better than to use his words to state the situation—after the disallowance has been brought in, after we got that victory he talks about. He said:

... proposals to erode our freedoms and our rights will ultimately erode our security as well. For this reason, we do not accept and will not accept the government’s executive proscription bill. We will not accept a regime of secret proscriptions, of decisions in closed rooms, of such significant and potentially destructive power in the hands of one person and one person alone. To have that kind of power exercised by one person in secret, particularly a member of a government executive ... is not acceptable in a democratic society and it should never be allowed on the statute books.

And I agree, that is the situation. What has happened since Senator Faulkner gave that description of this legislation is that we have had these robust safeguards built in. As I said before, they are a chimera. They do nothing. They involve some phone calls between the Attorney-General and the Leader of the Opposition. The Attorney has to take no notice of that. Potentially, after the proscription, a letter goes from an organisation to the Attorney-General to say, ‘We’ve been abused,’ and he has to take no notice of that.

Nothing has changed here except that Labor has caved in—that is what has changed. The argument that Senator Faulkner so eloquently and passionately put in June last year is now our argument. We put it in other words last year but I could not say anything contrary to what Senator Faulkner said in defence of the position the Greens and indeed the Democrats are taking on this legislation now. Nothing has changed in this legislation except that there is provision for the Attorney-General to ring the Leader of the Opposition to say, ‘I’m banning the Communist Party,’ or this or that conservation organisation or some Indigenous organisation. That is all there is to it. If parliament at some later time wants to disallow this regulation, so be it, but in the meantime that organisation will be closed down and its members jailed. That is our argument.

We must not give that sort of power to the executive. There is no onrush of a list of organisations to be proscribed from this government. The minister can tell us of 16 or 18 organisations that have been proscribed so far and they are all outside this country. Senator Faulkner has said the parliament has proscribed those with no trouble because they are terrorist organisations. But this is something different. This says that the Attorney-General can now arbitrarily decide that organisations, domestic or international and even domestic organisations which indirectly support organisations elsewhere, be immediately proscribed as terrorist organisations without giving reasons, without making public the evidence behind the decision. As it is,
there is a requirement that the minister come in here and tell the parliament why, and we respond to that—and we have not said no.

But all that goes aside now as Labor supports the government in giving to one minister—for reasons which do not become public—the power to proscribe organisations in this country. Sure, there is a list of reasons as to why an organisation can be called terrorist in the Criminal Code but, as with all such lists, it is wide open to interpretation—very wide open to interpretation. It may be an organisation that is involved in creating a serious risk to the health or safety of the public or a section of the public overseas. You can find a whole range of reasons where very good organisations could be argued to be doing that because they are opposing some despot somewhere who is in charge of the delivery of health functions elsewhere in the world.

I want to come back at this juncture and ask the minister,  ‘Can you assure the Senate that there is not more legislation coming down the line? Can you say to the Senate that you are not entertaining the sort of legislation that the Labour Home Secretary, David Blunkett, has floated in the UK which is now drawing widespread condemnation, including from other Labour members of the UK parliament, because it would, amongst other things, allow for secret trials against people the government over there considered to be terrorists? Is the government looking at the provisions under India’s Prevention of Terrorism Act that allow suspects to be detained for up to three months without charge and for up to three months more with permission of a judge? Is the Attorney-General looking at the Indonesian proposals to allow police to detain for up to seven days and then for a further six months for questioning, on very little evidence, citizens of that country? Will he be looking at Spain’s use of incommunicado detention, secret legal proscriptions and pre-trial detention for up to four years? I have already asked about the French law, where that can happen for two years. Would the minister now, in the committee, respond to those questions?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.15 p.m.)—I refer Senator Brown to the Attorney-General’s comments on Lateline last night. He was asked about following the French example of detention and he said, ‘Not at this time.’ He said that we, of course, would keep security legislation under continual review, and that makes sense. He mentioned that there was an aspect of giving evidence in a court which might be of a sensitive nature for intelligence purposes and how a court might deal with that. It is very real issue that we have at the moment. A prosecution might have to lead evidence in a matter that goes to national security. The Attorney-General said he was referring that, as I understand it, to the Australian Law Reform Commission—again, another sensible approach.

But he did say that the counter-terrorism legislation we have is something which you have to keep continually under review. We have seen that in recent months and over the past year. As for any legislation in the pipeline, the only legislation I am aware of that has any relevance is the transfer of prisoners, which was introduced into the House in relation to Hicks and Habib.

Senator BROWN (Tasmania) (6.16 p.m.)—I do try to keep tabs on the Attorney-General and I did watch Lateline last night. He said that, as far as he was concerned, the antiterrorist legislation—like we are dealing with today—is an unfinished canvas. I ask the minister: what else is there on the canvas to finish? When Attorney-General Ruddock said, ‘No, the French legislation is not to be brought in at the moment’—or whatever the
words were—he was directly implying that it is a future consideration. Correct me if I am wrong, but he did directly imply that there will be more legislation coming soon—that was the first thing. The second thing was that he was very cocksure that the Labor Party had caved in on this legislation because there is an election coming. He looked very pleased about it, and I was horrified.

Senator Faulkner—You believed him of course.

Senator BROWN—I do not agree with the Attorney-General on much, Senator Faulkner—

Senator Faulkner—But you do agree with him on that—I was just checking.

Senator BROWN—but I was tempted to think over what he had to say on that occasion.

Senator Faulkner—Rubbish! You are not allowed to mislead the parliament.

Senator BROWN—Nor would I, Senator Faulkner. It is a very serious matter. In the run to the last election, we saw the government serially draw Labor into supporting draconian laws against refugees coming to this country. We now know that the government has expended its ability to frighten the public about that, but it is looking for a new mechanism for spreading fear in the community—and the opposition knows that very well and that is why it has caved in here. The price of that cave-in is a serious erosion of the rights of Australians to have their parliament determine what organisations shall, and what organisations shall not, be proscribed and to have proper debate about it and a proper investigation at the parliamentary level, not just some minister behind closed doors saying, ‘That organisation goes on the list. We’ll close them down.’ One of the problems for the opposition is that it is just the sort of thing that Attorney-General Rud-
bilities are. The minister said that he only
knows about one piece of legislation, but that
does not get around the fact that this Attorney-
General took on this post and, from the outset,
has indicated that he is delighting in
the new opportunity to play wedge politics.
That does not just mean wedging the opposition
against the government; it ultimately
means there is an element of deceit of the
Australian people—a manipulation of the
electorate—involved in that. It is a pretty
poor political coin that is used there, but it
has been used and it will be used again. I
think there has to be a warning sounded
about it. If it is left to the Greens to make
that warning, so be it.

Senator GREIG (Western Australia)
(6.22 p.m.)—I think the unshakable, unmov-
able, inflexible principles of which Senator
Faulkner speaks in relation to his party’s po-
sition on this bill are open to challenge. What
did Senator Faulkner say when he addressed
this legislation in June 2002 when it was first
introduced? He said, in part:

While we have an in principle objection—
speaking here of principles—
to criminalising membership per se, we are pre-
pared to make an exception in the case—and only
in the case—of membership of organisations de-
declared to be terrorist organisations by the United
Nations Security Council. We have taken the view
that, if the international community, speaking
through the United Nations Security Council,
declares an organisation to be a terrorist organisa-
tion, we will accept membership of that organisa-
tion as being a criminal offence.

That is a significant shift. That is a radical
change from where Labor started to where it
is today. Those principles moved not once
but twice.

So what can we conclude from that dy-
namic? I think there are a few comments we
can make. The result of that scenario, at the
end of the day, is that Labor is effectively
saying from its original position to now that
it is opposed completely to the concept of
proscription—or, at least, opposed to it if the
power for proscription rests solely with the
coalition. But, if Labor has an opportunity to
participate in the process of proscription, it
does not have a problem with proscription
per se. Why is that happening? There has
been reference to—and I am one of those
people who have made reference to this—the
political environment in which we find our-
selves at the moment: an election year.

We should recall that—and I would be
able to, given the time, pull up the quotes
from the print media—only a matter of two
or three days after the election of Mr Latham
to the position of opposition leader, it was
mooted that Labor would revisit this bill or
those bills that are related to it with the spe-
cific view of mitigating the government’s
repeated attacks on Labor around the notion
that it is soft on terrorism and of trying to
defuse what was for Labor a difficult elec-
tion issue. The Prime Minister has never
hesitated to use international scenarios, the
fact of terrorism and the notion of border
patrol—and I think he regards that as one of
the government’s strengths. Mr Latham ei-
ther stated or indicated very early that defus-
ing this as an issue was something he wanted
to do.

I think that, within this election environ-
ment—which is not, and is never, conducive
to considered debate or sensible outcomes on
difficult issues—we have seen a compro-
mise. It is a backflip. If you like, it is a chess
move in a campaign year in which the gov-
ernment wants to keep alive community
anxiety about terrorism and the opposition
wants to militate against accusations of being
soft on it. The result is, I think and believe,
unnecessary legislation that would have been
an unlikely, if not impossible, outcome under
normal circumstances. When you look at the
result of these amendments, should they be-
come law, it really boils down to the Labor
Party having effectively decided to replace the Security Council, as the safeguard, with itself. That is entirely inconsistent with a significant number of submissions made during the inquiry into this bill and which argued that parliamentary scrutiny of the proscription power would not provide the sufficient safeguard. Yet the deal apparently struck by the government and Labor fails to ensure fully that parliamentary scrutiny. I will speak to that further when I have the opportunity to speak to the Democrat amendment.

Senator BROWN (Tasmania) (6.27 p.m.)—I noticed that today at the National Press Club a Federal Court judge, Justice Higgins, said that the legislation attacks freedom of association by making it a crime to belong to an illegal group. You have to accept that, once the Attorney-General puts a group on the secret list—which may become public but the reasons will not—it is a crime to belong to that organisation, whatever it might be. The concern there is that not just the organisation but everybody who belongs to it falls foul of the law in a process which is entirely in the hands of the Attorney-General—and three months later, the parliament might review the decision to make these entities, people and organisations illegal. Can the minister inform the chamber of any other circumstance in which an Australian citizen would be found to be committing a crime without having gone before the court? I am pointing to the enormity of the power being handed to the Attorney-General in this matter to make both organisations and people criminals without even a reference to the parliament for a debate. I note that, in the explanatory memorandum issued by the government, it says under the section explaining the Attorney-General’s power to proscribe an organisation:

The Minister will form this opinion on the basis of information relevant to security provided to him by the Australian Security Intelligence Organisation.

Are we to read from that that the minister will make the determination on the basis of an ASIO representation and that is that? If not, where does it say in the explanatory memorandum that the minister will be required to seek counsel from anywhere else at all? ASIO makes mistakes and intelligence is fraught. We have had a lot of debates about that. I find it highly dangerous that this determination is going to be made not so much by the minister but by ASIO. What we are seeing unfold in this legislation is that the Attorney-General will be the safeguard against ASIO proscribing organisations. If you follow the line of the government’s thinking, you might argue that we should remove the middle person and simply give ASIO the power to proscribe organisations. Then you would have a police state. I am very worried about that explanation. I think it is a very poor explanation; in fact, it is a very alarming explanation. I wonder if the minister would elaborate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.31 p.m.)—To answer Senator Brown’s first question: I am not aware of any other aspect of law at the Commonwealth level which makes it a crime to belong to an organisation. Of all the provisions we looked at in our counter-terrorism package, these provisions—which deal with membership of a terrorist organisation—are the only ones which make it an offence to belong to an organisation. Of all the provisions we looked at in our counter-terrorism package, these provisions—which deal with membership of a terrorist organisation—are the only ones which make it an offence to belong to an organisation. On the second point Senator Brown raises: as I understand it, the legislation does not prohibit the minister from informing himself of other matters, but the explanatory memorandum provides the basis for ASIO to provide that information to the minister and the minister has to be satisfied of the criteria, which are set down very clearly. The explanatory memorandum states
that Australian intelligence, in this case ASIO, provides it to the minister but ASIO would take information from other places—for instance, from other intelligence organisations—as well. There is nothing untoward in that. I really cannot see the point that Senator Brown is making. The explanatory memorandum explains how it operates and how we would envisage it operating. At the end of the day, the Attorney-General has to be satisfied in accordance with strict criteria which are laid down in the law.

Senator BROWN (Tasmania) (6.33 p.m.)—No, there are not strict criteria but there is a criterion, which is that the Attorney-General forms his opinion on the basis of information relevant to security provided to him by ASIO—full stop. So ASIO is the arbiter in this. That is what the explanatory memorandum says. It is very dangerous, and we have to depend upon the Attorney-General to be the backstop. Let us look at what Mr Crean had to say last year in the House of Representatives, that a government like the current one is quite capable of making this a political weapon. This legislation removes any safeguard against the abuse of this power by a minister of the day or by an intelligence organisation that gets to a minister of the day. There is no safeguard. There is no requirement for the minister to seek corroboration elsewhere. We just had ASIO advising the government that Saddam Hussein had weapons of mass destruction. I take it from what the Prime Minister said that he got the feeling from that advice that minute amounts of Saddam Hussein’s arsenal could cause death and destruction on a mammoth scale.

Senator Faulkner—Are you sure ASIO said that?

Senator BROWN—No, I am not sure ASIO said that, but that is what the minister—in this case the Prime Minister—inferring from the advice he was getting from a number of organisations, including ASIO.

Senator Faulkner—You have to be careful what you say. Generally your attacks on the government on this are—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Brown, you should not let the Leader of the Opposition in the Senate incite you into answering him. You should address your comments through the chair.

Senator Faulkner—I just want you to be right. By all means criticise Mr Howard; he deserves it. But you have to get it right. You don’t want to strain your credibility.

Senator BROWN—I hear what you are saying, that I will strain my credibility if I am concerned about intelligence that has been supplied to the government in the past. I do not think so, Senator Faulkner. I am the first to say that we need good intelligence organisations in this country.

Senator Faulkner—It’s what you said about ASIO. You have to be right.

Senator BROWN—Yes. You may debate that. Far more worrying is the admission from the government that we have just extracted, that there is no other circumstance in the Australian statutes where an individual can be criminalised by the action of a minister. There is none. Why should we allow this to happen, especially short of parliament debating the matter and acting on the evidence brought before it? At least parliament would have the function of a court in that instance. This Labor supported legislation removes that safeguard. How can we allow that to happen? I ask the minister to further clarify the matter. If an organisation is proscribed under this legislation, where in this legislation is there latitude for members, having learnt about that, to resign or remove themselves from the membership list? My reading of it is that ipso facto the minute an
organisation is proscribed all those people who are members of that organisation are criminals. I would like the minister to explain to me whether that is not the case and what rights the individual members of such organisations have to fight having such criminality brought upon them by an action of the minister in secret on the advice of ASIO.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.37 p.m.)—I must clarify that point because I think Senator Brown does not appreciate that in subdivision B, which deals with offences, subclause 102.3(2) provides that the offence: ... does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

I think that covers it.

Senator BROWN (Tasmania) (6.38 p.m.)—Does that apply to the organisation, on first knowledge that the organisation is a terrorist organisation, being closed down under the direction of the Attorney-General? Is that what that particular clause applies to? I do not think so. I think that under this legislation when an organisation is proclaimed a terrorist organisation and is closed down so are the members. It is not exactly what is being described by the minister here as being applicable to the situation after the Attorney-General has banned the organisation under this legislation. Let us make it clear, because this is going to be important further down the line, that the minister is saying that after the Attorney-General bans an organisation—and, remember, the public does not know about this—and it is closed down, the membership of that organisation, one and all, are going to have the opportunity to remove themselves as members. I wonder in a legal sense how you can remove yourself from the membership of an organisation that no longer exists because it has been proscribed. How do you do that legally? Can the minister say exactly how long a member has after they are given notice that their organisation has been proscribed under this legislation to act to disassociate themselves from it or remove themselves as members?

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that the amendments moved by Senator Ellison be agreed to.

Senator BROWN (Tasmania) (6.40 p.m.)—I want a response from the minister. These are important matters and I would like the minister to answer exactly the matters that I have raised. They are not just important to an understanding of this piece of legislation. I have no doubt they are going to be important to consequent potential legal action coming down the line by citizens who feel aggrieved that they can be criminalised under this legislation without having done anything, so far as they are concerned, of a criminal nature.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.41 p.m.)—The section I conveyed to the Senate sets out very clearly that if a person takes all reasonable steps to cease to be a member of that organisation as soon as practicable after that person finds out that the organisation has been proscribed as a terrorist organisation then they are given an absolute defence. It is all on the knowledge of the person concerned. They cannot be found guilty whilst ignorant of that fact. It is very clear. It states that if the person takes ‘all reasonable steps to cease to be a member of the organisation as soon as practicable’ after that person has that knowledge—I cannot take it any further than that. It is very clear; it provides an absolute defence and it certainly guards against anybody being liable to be found guilty who is a member of an organisation which they
did not know to be a terrorist organisation. That is what Senator Brown is trying to make out with this legislation, and it just does not hold. The section that I have read out provides the absolute defence.

Senator BROWN (Tasmania) (6.42 p.m.)—Will it be possible to arrest people for being members of a proscribed organisation, called a terrorist organisation after that proscription occurs?

The TEMPORARY CHAIRMAN—The question is that the amendments moved by Senator Ellison be agreed to.

Senator BROWN (Tasmania) (6.42 p.m.)—It is an important question. I hope we have time to deliberate on this. The question to the Attorney’s representative, Senator Ellison, is: after the Attorney-General proscribes an organisation, is there anything to stop members of that organisation being arrested the next morning, even though they may not be aware of the proscription? This has not been worked out. Is there a prohibition on the people being arrested until they get to find out and then have time to take reasonable steps to dissociate themselves? I find that illogical, frankly. If you think about it from the point of view of the policing organisations that want an organisation proscribed, to leave the option of members to say, ‘We didn’t know about it,’ and then say, ‘We are going to take some time to dissociate ourselves,’ does not seem to be logical to the thrust of this legislation, which is to proscribe organisations and their members and to put them out of action.

I think we should discuss this a little further and get clarification on it, because frankly I do not think the minister has thought this out—I do not think anybody else has thought it out. I suppose somebody back there behind those closed doors may have thought it out, but I am not sure about this at all. The minister’s reading from the legislation that is now being amended gives me no assurance. Let us have it made explicit by the minister that members of a terrorist organisation cannot be arrested on the basis of their membership not having been renounced until they have been told about the organisation and given an opportunity to renounce their membership. Frankly, it is not logical to me that that is what this legislation is about.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.45 p.m.)—Senator Brown has asked whether a person could be arrested. Without going into the general laws of arrest as they apply at the federal level, I can briefly say that the police have to have a reasonable belief of the commission of an offence to found the basis of arrest, because they can face action for wrongful arrest. To say that because you have outlawed or proscribed an organisation all those members could be arrested willy-nilly overlooks the safeguards we have in our laws dealing with the powers of arrest.

I have just outlined an absolute defence that someone could make out. Someone could say to the police, ‘I was not aware of this proscription. Now that I am aware I will immediately withdraw my membership.’ If the police proceeded to arrest the person who was taking those steps—and I cannot pre-empt what the police may do—with the laws as they are, the police would have to make out a reasonable belief. I cannot pre-empt what law enforcement officers may or may not do in relation to the commission of any offence and the arrest of any suspected offenders; I can say that we have adequate safeguards in the laws of arrest in this country and that they would be regarded in relation to the commission of any organisation and the subsequent questioning of any members of that organisation. That subclause I have read would be taken into account in any action taken by law enforcement officers.
Senator BROWN (Tasmania) (6.47 p.m.)—We are getting into difficult territory here and I am not satisfied, because persons who are members of a terrorist organisation are committing a crime. The question arises: at what stage can the police arrest such a person and detain them under the Criminal Code? Remember that members and supporters of proscribed organisations face very stiff penalties of, variously, 15 to 25 years in jail, depending on their association with that organisation or—even if they are not members—the support they are giving that organisation. It seems illogical that members of a terrorist organisation have the defence, when a police officer comes to arrest them, of saying, ‘I now renounce my membership.’ It just does not sound logical, and I believe people will be arrested under this legislation for being members of a proscribed terrorist organisation. The argument, no matter what they say, will be that they knew about it or that they should have known about it, and then it will be for them, at some stage or other, to argue that defence in court. I do not think for one minute that people who are members of an organisation which becomes a terrorist organisation by a ruling of the Attorney-General without reference to the parliament are going to have that defence when it comes to their arrest. Let me say one thing about what the minister just had to say: there are adequate measures under the law already to arrest a person who is involved in a terrorist activity or a potential terrorist activity.

Progress reported.

DOCUMENTS
Consideration

The following government document tabled earlier today was considered:


Debate adjourned till Thursday at general business, Senator Buckland in continuation.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

Foreign Affairs: Israel

Senator McGauran (Victoria) (6.51 p.m.)—I wish to bring to the attention of the Senate an article written in the last edition of the National Observer quarterly publication. The article was entitled ‘Israel and anti-Semitism’ and it was penned by the editor. The National Observer is a publication of mild repute and normally of a strong conservative flavour. Nevertheless, the article I refer to, ‘Israel and anti-Semitism’, was error-ridden and full of untruths.

The first assertion the article makes is that Israel was established by Jewish terrorism, which involved the murder of civilians and British soldiers and the driving out of Arabs, and therefore is an illegal state. The truth is that on 29 November 1947 the United Nations General Assembly resolution 181 approved the Plan of Partition with Economic Union as proposed by the majority in the United Nations Special Committee on Palestine. Australia and the greater majority of the world supported this resolution. Only 13 countries opposed this resolution. Following this resolution, on 14 May 1948 the United Kingdom relinquished their mandate over Palestine and the State of Israel was proclaimed. A day later on 15 May 1948 every Arab nation bordering Israel declared war and attacked Israel. Thus began the first war of the defence of Israel—for which they have been fighting to this day.

The second assertion I dispute with the editor is that any criticism of Israel is immediately referred to by the Jews as anti-
Semitism—therefore silencing any opposition for fear of being called racist. The truth is that vigorous political debate on Middle Eastern affairs is something Israel does not deny. After all, Israel is the only democracy in the Middle East. Israel is in fact surrounded by brutal and militarised dictatorships. Its own parliament, the Knesset, represents every voice and faction within the country and elections are true, fair and open. It is also notable that, even with the strong influence the military has on the daily life of politics in Israel, the parliament still prevails—something that is rare in the history of other countries when the military is so strong. It is also notable that attacks upon the Jewish person occur daily through the Arab press, utterly unchallenged by state or person—let alone this editor.

The third assertion I seek to tackle is the muddled justification of the Palestinian suicide bombers. The editor says the Palestinians should not be blamed unless equal blame is allotted to the Israelis. The truth is that there is no moral equivalent to a suicide bomber’s murderous attack upon civilians—men, women and children—and to the right of retaliation against the perpetrators of these attacks. The abhorrent results of terrorist attacks upon civilians demand the toughest government response. Australia would do the same. As the terrorist attacks escalate, what choice does Israel have but to respond? Yet, Israel has proven that it will cease using armed forces against Palestinian targets if the campaign of terrorism against its citizens and against the state stops. The opposite is not true. Further, Israel’s longstanding land for peace offer is time and again ignored on the grounds of outright rejection of the very existence of the State of Israel. This is the truth to the cycle of violence in the Middle East.

The fourth assertion the editor makes in his article is that a recent European opinion poll showed Israel was regarded as a greater threat to peace than Saddam Hussein’s Iraq. This unsourced statement is absurd in itself. Nevertheless, the editor fails to admit Europe’s self-confessed rise of anti-Semitism, in particular in France. On 19 February this year in Brussels, the President of the European Commission made an address outlining the grave concern that the commission and the union had regarding the rise of anti-Semitism in parts of Europe. The president said:

We do see vestiges of the historical anti-Semitism that was once widespread in Europe. We do see attacks against synagogues, desecration of Jewish cemeteries and physical assaults on Jews.

The president called upon the member states and the European Union’s human rights agency to draft measures and proposals to combat this rising anti-Semitism. At the international level, the president urged the United Nations General Assembly to adopt a resolution on anti-Semitism. In conclusion, the editor of the National Observer has a right to put an argument for one side of this layered, complex, historical and ever-shifting issue of Middle East politics, indeed Middle East life, but to spice it with untruths reveals a hell-bent prejudice.

**Political Parties: Donations**

**Senator MURRAY** (Western Australia) (6.57 p.m.)—On Thursday the Senate will vote on whether to refer an inquiry on electoral funding and disclosure to the Joint Standing Committee on Electoral Matters. The Senate will be asked to resuscitate an inquiry that was constituted in August 2000 but lapsed at the 2001 federal election. That inquiry was long overdue then, is even longer overdue now, and is a matter of great public interest. It is not least a matter of great public interest because this election year will see several tens of millions get flushed out of the pockets of shareholders of companies and members of unions into political party
coffers, often without the direct permission of those shareholders and members.

Yesterday I asked the Special Minister of State this question:
With the exception of small donations, does the minister accept that the fundamental principle that should govern the disclosure of political donations is that whoever makes a donation should be identifiable?
The answer should have been yes, but the minister could not say yes because, while the principle is absolute—and supported, as far as I am aware—he knows the law expressly permits donors to be hidden. I then asked him:
Does the government recognise that keeping donors’ identities secret has the potential to encourage corruption in politics?
Again, the answer should have been an unequivocal yes. The minister knows that can be the effect of secrecy, but the law allows secrecy—and secrecy means potential corruption could exist. I asked him:
What steps does the government propose to take to ensure that those individuals, organisations or companies who donate secretly via trusts, foundations, clubs and fundraisers are disclosed?
We are talking about multimillions of dollars here, not thousands. Listeners to the minister’s answers can check the Hansard for themselves. In theory, the minister showed a willingness to consider reform proposals. In practice, he knows—and I know—that his hands are tied. Even if he wanted to, he is not allowed to make Australia’s political donations laws much more open, much more transparent or much more accountable because his political masters will not let him. That state of affairs will continue until such time as there is sufficient public, political and media pressure to make the system more open, more transparent and more accountable.

Political parties need money badly, and they are reluctant to do anything that impedes the flow. Ever since the first political donation changed hands, money has been used to influence electoral outcomes and the process of government. Whether, when or if money dictates the next step, the exercise of undue access and corrupting influence is much harder to determine. If that is an inescapable reality, the question is then not how to stop it but how to control it and to minimise it. As I have said before: corruption best flourishes in the dark, in secret. The more open and accountable our political system is, including the financing of politics, the less the chance of corruption. I make no apology for raising this issue and these themes again and again inside and outside parliament. I make no apology for constantly repeating the message. If power can corrupt, so can money.

Australia is a country that is justifiably proud of its standards but, high as they are, those standards can go higher. When I last looked, that amazing organisation Transparency International had Australia 10th or 12th in the list of countries on the Transparency International Corruption Index. Australia was among those countries measured as the least corrupt, but above Australia were the Kiwis, the Scandinavians and quite a few other countries. So while we are at the clean end of international measures of corruption, we are still regarded as having some corruption. And I suggest to you the first place to ensure corruption never gets a hold is our political system. I am not just referring to the federal system; I am referring to all levels of government.

The fact that ordinary Australian citizens view large political donations with suspicion because of what they see as an obvious link between money, politics and policy should sound alarm bells. The influence of money on politics raises the spectre of money poli-
tics. While money politics insinuates itself into the democratic polity in various and often hidden ways, a key artery is through political donations. The way in which that artery can be exposed is, of course, through proper disclosure. This year’s release of the parties’ annual returns by the Australian Electoral Commission gives us, in theory, a glimpse into the finances of political parties. But if you have a look at the summation of all those returns, it is impossible to say how much a party has raised in donations each year; it is almost impossible to supply a list of donors each year and it is certainly impossible to establish the identity of all donors. It is very clear when a union or a corporation makes a donation as to who has made the donation; it is not at all clear when a trust, a foundation, a club or a fundraiser does it, or any of those entities behind which donors can hide. But returning to the lack of clarity that results from the legislation we have, in theory the total receipts for the last year would be well over $80 million for all the political parties. But that is theory. There are so many interdivisional transactions and sources of income which are not from donations that it is very difficult to find out how much money is actually raised by donations. All we know is that it is tens of millions of dollars and we know it certainly does not reach the figure I just mentioned of $84 million.

The dramatic financial inequalities between the main parties is not the issue. There is a sharp line of funding demarcation with the Labor, Liberal and National parties on one side, and the Democrats and the Greens on the other. And apart from the notoriously well-funded CEC, whose returns for 2002-03 showed they raised approximately $1.5 million, all other participants in the political process seem to be pretty well beggars at the donations table. It is not the issue that the Labor, Liberal and National parties’ funding per vote is massively greater than funding per vote received by the Democrats and the Greens, for instance. It is not the issue that those parties have much larger war chests to fight the federal elections. What is at issue is that all the parties I have mentioned, particularly those five, have immense influence in our political process. So while funding is actually absolutely vital, necessary and essential for the operation of political parties, what we do have to take care about are any donations that may have strings attached and any donations where influence is undue, hidden or of a corrupting nature.

Recent episodes serve to highlight the role of money in politics. There have been controversies which have affected the Liberal Party and the Howard government. There have been controversies which have affected the Labor Party and their circumstances. There have even been controversies in the past with the Democrats. There are principles we need to establish to protect the political process. It is not a question of finger pointing; it is a question of laying down principles and standards which give us the protections we need.

I get singularly disturbed when I see a vehicle such as the Australians for Honest Politics fund created because I do not know who lies behind it, where the money came from or what the motives were. I happen to know that a couple of the individuals concerned have been at this game for 15 years, including putting their legal knife into the Democrats. It is a pretty mischievous outfit. I get concerned when I see major developers, major constructors and participants from both the employee and the employer sides heavily involved in donations which can materially influence outcomes, in particular in the construction industry. I get concerned about donations from the ethanol industry and what effects that may have. The message I am trying to put across is that the parliament has to
accept that this is an issue of great concern to the population of Australia. It does need an inquiry— (Time expired)

Senate adjourned at 7.07 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:


Tabling

The following documents were tabled by the Clerk:


Social Security Act—Social Security (Threshold Rates) Determination 2004 (No. 1).

Departmental and Agency Contracts

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2003—Statements of compliance—

Attorney-General’s portfolio.

Industry, Tourism and Resources portfolio.

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Departmental and agency contracts for 2003—Letters of advice—

Attorney-General’s portfolio.

Health and Ageing portfolio.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Australia Post: Licensees and Contractors

(Question No. 2404)

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

With reference to the answer to question no. 175 taken on notice during the 2002-03 Budget estimates hearings of the Environment, Communications, Information Technology and the Arts Legislation Committee, concerning occupational health and safety issues for contractors and licensees, in which the Minister implied that customers should assist licensees lifting parcels over 16kg:

(1) What action is taken if the licensee is unable to lift parcels due to age, injury, or pregnancy, and the customer is unable to assist or refuses to assist.

(2) What action is taken if an oversize parcel does not fit in a car or similar vehicle.

(3) How does Australia Post differentiate between what is freight and what is a parcel.

(4) Why does Australia Post accept parcels weighing over 16kgs, if these are classified as freight, not parcels.

(5) Does Australia Post specify in the contractor’s tender document the type of lifting equipment that a contractor is required to carry.

(6) Are all parcel contractors required, as part of their contracts, to provide lifting equipment.

(7) Is Australia Post responsible if injury occurs to any of its contractors (licensees or mail contractors).

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 Australia Post:

(1) Under the Licensed Post Office agreement, licensees receive payments from Post for certain activities and in turn agree to provide the services associated with those payments. Generally, licensees who are unable to fulfil these obligations due to short-term illness, pregnancy or disability make other arrangements including the use of relief staff or other assistance.

(2) Parcel contractors are independent operators and under their contract are required to provide all equipment necessary to fulfil their contract requirements. If a parcel cannot be delivered due to size or weight, then other arrangements are made, such as contacting the customer (via telephone or a card in their letter) to arrange collection.

(3) and (4) Australia Post does not differentiate between freight and parcels. The maximum allowed weight for a parcel accepted over a retail outlet counter is 20kg. Items up to 32kg may be accepted under special contract conditions.

(5) No.

(6) Parcel contractors are required to provide all equipment necessary to fulfil their contract requirements.

(7) As independent business operators, contractors must adhere to the applicable State and Federal laws covering Occupational Health and Safety requirements. The contract also requires incorporated bodies to provide employee insurance cover that is applicable to the State of operation. Where, by law, the contractor is unable to obtain employee insurance cover, the contract
requires that personal accident insurance is taken out. Australia Post would not expect to bear responsibility for any injury to a contractor, unless the circumstances indicated it had been negligent.

**Australia Post: Authorised Holidays**  
*(Question No. 2405)*

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

1. Will any mail be delivered on the post-Christmas holiday Australia Post has authorised for its staff.
2. Who will be required to work on the authorised holiday.
3. Will corporate post offices be open for business.
4. Will licensees, mail contractors and van drivers be required to work.

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 Australia Post:

1. There will be no general mail delivery on the Authorised Holiday (2 January 2004). Deliveries of items sent by speed services such as Express Post, Express Post Platinum and EMS International Courier will occur in capital city metropolitan areas and some major regional centres.
2. to (4) The authorised holiday forms part of the award conditions that apply to Australia Post staff. Staff engaged under these award conditions are not required to work on this day. In selected locations (eg corporate outlets located in major shopping complexes) retail staff may volunteer to work on this day. Licensees and mail contractors are engaged under different conditions, with no provision made for the authorised holiday in their respective contracts. Licensees are required to open as per their Licensed Post Office Agreement. Depending on locality, mail contractors and some volunteer delivery staff will operate on this day.

**Australia Post: Dispute Resolution Procedures**  
*(Question No. 2406)*

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

1. In how many dispute resolution procedures, using the Office of Mediation Adviser process, has Australia Post been involved in respect of licensees.
2. What authority to make decisions does Australia Post give its representatives at Office of Mediation sessions.
3. How much autonomy do Australia Post representatives have in these instances.

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 Australia Post:

1. Over the past five years, there have been five occasions where a Licensee has chosen to refer a dispute to the Office of Mediation Adviser.
2. and (3) Consistent with the guidelines issued by the Office of Mediation Adviser, Post’s representative has the authority to settle or finalise the dispute. The representative will take into account the Licensed Post Office Agreement and associated policies when discussing any outcome.

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QUESTIONS ON NOTICE
Australia Post: Contractors
(Question No. 2407)

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

(1) What is the current policy of Australia Post in relation to the merging of parcel contracts in metropolitan areas.

(2) How many instances of such merged contracts occurred during the 2002-03 financial year; and (b) how many have there been for the 2003-04 financial year to date.

(3) How will these types of mergers affect primary contractors.

(4) What compensation is available to primary contractors for the additional risk arising from being required to employ subcontractors.

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 Australia Post:

(1) As a general rule, Australia Post does not merge metropolitan parcel contracts. Parcel contracts are normally tendered for on a postcode or regional area basis. There are occasions, however, when a review of an area shows that service efficiency improvements may be obtained if mail contracts (including parcel contracts) are rearranged. Such changes occur only when an opportunity arises, such as when a contractor ceases business, has requested the assignment of a contract to a third party or when a contract has reached its full term.

(2) (a) and (b) One metropolitan parcel contract was merged in 2002-03 and six metropolitan parcel contracts have been rearranged in the five months to 30 November 2003.

(3) Mail contractors are contracted under the public tender system. If previously separate mail services were to be merged then each tenderer (including the former primary contractors) would need to consider the specifications for the merged mail service (including the changes to operating costs and estimated mail volumes) in any tender submission.

(4) Mail contractors, as small business enterprises, are contracted under a public tender system. Full financial evaluation and risk is borne by the tenderer. In calculating and submitting the tender, the tenderer will include profit and cost components. These cost components include vehicle operating costs, labour, equipment leasing or purchase, statutory costs and commercial insurances. Australia Post encourages every tenderer to obtain independent financial and legal advice before submitting a tender to ensure that the tenderer is fully aware of the financial and legal obligations under the contract. Employment or subcontracting requirements are the responsibility of the contractor in assessing the ability to perform the services in accordance with the contract.

Australia Post: Contractors
(Question No. 2408)

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

With reference to the answer to question no. 174 taken on notice during the 2002-03 Budget estimates hearings of the Environment, Communications, Information Technology and the Arts Legislation Committee: have any Australia Post mail contractors been required to incorporate part-way through a contract; if so, how do mail contractors recoup the costs of incorporation.
Senator Kemp—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question, based on information provided by Australia Post:

No. Australia Post encourages incorporation on an opportunity basis, which may be when a contract ceases or is renegotiated due to an agreed change in terms and conditions (e.g. an extension of term).

As incorporation is only raised in conjunction with the negotiation of a contract, the costs of incorporation can be included in the revised contract rate.

Australia Post: Security
(Question No. 2409)

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

With reference to the recent armed hold-up and consequent death of a customer in the Australian Capital Territory:

(1) How has Australia Post improved security at licensed post offices in the Australian Capital Territory following this incident.

(2) What assistance has Australia Post extended to the deceased’s family.

(3) If costs for security at licensed post offices outweigh the commissions received, what action does Australia Post propose to address this problem.

Senator Kemp—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question, based on information provided by Australia Post:

(1) Security is included in licensee training and Licensed Post Office (LPO) meetings, with regular reminders provided via Information Bulletins. To ensure the corporation’s retail security standards are met, Post’s Corporate Security Group (CSG) conducts security audits of all LPOs at least every two years and more often if circumstances change. The crime risk management model used is considered “best practice” and recently won an Australian Government Crime Prevention Award.

Since the recent armed hold-up, CSG has conducted security audits at 2 LPOs in the ACT (including Latham), 5 corporate outlets and 3 business centres. CSG also provides a professional security consultancy which is available to licensees 24 hours a day, free of charge. A number of LPOs in NSW and the ACT have used the consultancy service in the past two months.

(2) The deceased’s family received professional counselling from the Canberra Hospital Social Work area. Post provided contact and messages of condolences.

(3) Australia Post and the licensee have a joint responsibility for providing security at an LPO. For example, Post provides safes and time lock cash containers and the licensee provides alarms and counter modifications. Post provides interest free security loans to licensees to assist with meeting security requirements.

Post is not aware of any situation where the cost of security outweighs the fees and commissions received by a licensee.

Australia Post: Business Centres
(Question No. 2410)

Senator Mackay asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:
(1) What is Australia Post’s policy in relation to business centres competing for business with licensed post offices.

(2) Does Australia Post offer any incentives that may encourage customers to move their business from a licensed post office to a business centre.

(3) In the event of a licensed post office losing a customer to a business centre, what compensation is payable for the loss of the ongoing business.

**Senator Kemp**—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question, based on information provided by Australia Post:

(1) Post employs a multi-channel approach to market segments including a physical component that is made up of Business Centres, Retail Shops and Licensed Post Offices. Post does not promote competition amongst these channels.

(2) Customer incentives are built around attracting new business or retaining current business, irrespective of which channel(s) the customer uses.

(3) Under the Licensed Post Office Agreement, there is no provision for compensation to be paid to Licensees when a customer chooses to change to another outlet.

**Australia Post: Licensee Advisory Councils**

(Question No. 2411)

**Senator Mackay** asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

(1) How much money has Australia Post budgeted for Licensee Advisory Councils, including the national and the six state licensee advisory councils.

(2) What has been the expenditure to date in relation to these councils.

(3) Is the Minister confident that this expenditure represents ‘good value for money’.

(4) Under what item in Australia Post’s budget is this expenditure funded.

**Senator Kemp**—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question, based on information provided by Australia Post:

(1) Allowances in 2003/2004 State and Headquarters Commercial Division budgets are in the order of $100,000.

(2) Expenditure from 1 July to 30 November 2003 has been around $40,000, which is in line with budget.

(3) The introduction of the Licensee Advisory Council structure has provided the opportunity to more effectively communicate and harness the collective intellect of the Licensed Post Offices’ network to develop business for mutual benefit. Feedback from Licensees confirms that the Licensee Advisory Council processes are achieving their intended outcomes.

(4) Allowances in 2003/2004 State and Headquarters Commercial Division budgets are in the order of $100,000.

**Australia Post: Old Launceston Post Office**

(Question No. 2412)

**Senator Mackay** asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 27 November 2003:

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**QUESTIONS ON NOTICE**
QUESTIONS ON NOTICE

(1) Can the Minister advise whether Australia Post intends to sell the Old Launceston Post Office building; if so, when, and can the details of the proposal be provided.

(2) Which agents are managing the sale or any remaining tenancy agreements.

(3) (a) What instructions do the agents have; and (b) have these instructions changed in any way in the past 6 months.

(4) Which organisation or individual currently holds the head lease of the building and have there been any negotiations with a new head lease tenant, or with other tenants.

(5) Where there any disputes with or complaints from the former head lease tenant.

(6) Is Australia Post charging management fees.

(7) Are there any plans to extend the occupancy of the Australia Post business centre, if not, why not.

(8) Which organisations or individuals currently occupy other parts of the building.

(9) What maintenance has been carried out on the building in the past 2 years.

Senator Kemp—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question, based on information provided by Australia Post:

(1) No. Australia Post has no plans to sell the old Launceston Post Office building.

(2) The Hobart Office of Colliers International manages the tenancy agreements.

(3) (a) and (b) The agents have been instructed to lease the premises at the current market value. The leasing instructions have not changed in the past 6 months.

(4) There is no current head lease. There are three individual lease arrangements and Post is currently negotiating with 2 other parties in relation to vacant area on the ground floor.

(5) There was a dispute with the former head lessee concerning unpaid outgoings which has now been resolved to the satisfaction of both parties.

(6) No.

(7) No. Current business levels would not warrant any such extension.

(8) There are three tenants who have entered into direct leases with Australia Post – Admix, Prompt Finance and Ebooking.

(9) The building was extensively renovated by Post in 1998, prior to the previous head lessee’s occupation (costing in excess of $800,000). Australia Post has spent $8,550 in maintenance on the building in the last two years.

Australian Broadcasting Corporation
(Question No. 2457)

Senator Cherry asked the Minister representing the Minister for Communications, Information Technology and the Arts, upon notice, on 8 December 2003:

What was the cost to the Australian Broadcasting Corporation (ABC) including time and expenditure on material, labour and other expenses, in: (a) investigating and responding to Senator Alston’s 68 allegations of bias, made against the ABC in relation to its coverage of the war on Iraq; and (b) responding to Senator Santoro’s freedom of information requests in relation to ABC news and current affairs coverage of (i) the Iraq war, (ii) the Tampa incident, (iii) illegal arrivals, (iv) the Government’s detention policies and the ‘Pacific solution’, and (v) Australia’s political and military relationship with the United States and Britain in the context of Iraq and the war on terrorism.

Senator Kemp—The Minister for Communications, Information Technology and the Arts has provided the following answer to the honourable senator’s question:
(a) The ABC has advised that the estimated time and resource cost to the ABC for staff who were engaged to investigate and respond to Senator Alston’s 68 allegations of bias was approximately 1,700 hours and $195,000 respectively.

(b) The ABC has advised that the estimated time and resource cost to the ABC for staff who were engaged to investigate and respond to Senator Santoro’s Freedom of Information requests in relation to parts (i), (ii), (iii), (iv) and (v) above, was approximately 98 hours and $10,000 respectively.

Science: Chief Scientist
(Question No. 2506)

Senator Brown asked the Minister representing the Minister for Science, upon notice, on 13 January 2004:

Has the Chief Scientist provided any advice to the Minister, his department or its agencies about the proposed Australia United States free trade agreement; if so: (a) when; (b) what was that advice; and (c) can a copy of the advice be provided.

Senator Vanstone—The Minister for Science has provided the following answer to the honourable senator’s question:

No. The Australia-United States Free Trade Agreement was the subject of a paper prepared by an independent working group of the Prime Minister’s Science, Engineering and Innovation Council. The Chief Scientist was not responsible for this paper. The paper was discussed at a meeting of the Council on 28 November 2003. The Council was chaired by the Prime Minister and attended the Minister for Science and by the Chief Scientist, as Executive Officer.

Environment: Protection and Biodiversity Conservation Legislation Permits
(Question No. 2518)

Senator Nettle asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 27 January 2004:

With reference to page 196 of the Department’s 2002-03 annual report which states that only one permit was issued under section 201 of the Environment Protection and Biodiversity Conservation Act 1999, did the Minister issue any other permits during the 2002-03 reporting period; if so: (a) which threatened species were affected; and (b) which Commonwealth areas were involved.

Senator Ian Macdonald—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

Yes, other permits were issued. However, I am advised that due to an administrative error these permits were not included in the annual report.

(a) The threatened species affected were:

- Tasman Starling
- White-throated Pigeon (Lord Howe Island)
- Red-crowned Parakeet (Macquarie Island)
- Red-crowned Parakeet (Lord Howe Island)
- Rufous Bristlebird (western)
- Kangaroo Island Emu
- Dwarf Emu
- Emu (Tasmanian)
- Roper River Scrub-robin
Lord Howe Gerygone
New Zealand Pigeon (Norfolk Island race)
Long-tailed Triller (Lord Howe Island)
Norfolk Island Kaka
Southern Boobook (Lord Howe Island)
White Gallinule
Paradise Parrot
Lewin’s Water Rail (western)
Macquarie Island Rail
Lord Howe Fantail
Grey-headed Blackbird
Lord Howe Vinous-tinted Thrush
White-chested White-eye
Robust White-eye
Scrubtit (King Island)
Spotted Quail-thrush (Mt Lofty Ranges)
Yellow Chat (Dawson)
Round Island Petrel
Herald Petrel
Brown Thornbill (King Island)
Christmas Island Goshawk
Wedge-tailed Eagle (Tasmanian)
Red-tailed Black-Cockatoo (south-eastern)
Glossy Black-Cockatoo (South Australian)
Carnaby’s Black-Cockatoo
Southern Cassowary (Australian)
Norfolk Island Green Parrot
Coxen’s Fig-Parrot
Eastern Bristlebird
Amsterdam Albatross
Tristan Albatross
Northern Royal Albatross
Gouldian Finch
Buff-banded Rail (Cocos (Keeling) Islands)
Swift Parrot
Helmeted Honeyeater
Southern Giant-Petrel
Black-eared Miner
Star Finch (eastern)
Orange-bellied Parrot
Norfolk Island Boobook Owl
Forty-spotted Pardalote
Night Parrot
Western Ground Parrot
Golden-shouldered Parrot
Western Whipbird (western heath)
Gould’s Petrel
Antarctic Tern (New Zealand)
Southern Emu-wren (Fleurieu Peninsula)
Abbott’s Booby
Chatham Albatross
Buff-breasted Button-quail
Regent Honeyeater
Slender-billed Thornbill (western)
Thick-billed Grasswren (eastern)
Thick-billed Grasswren (Gawler Ranges)
Thick-billed Grasswren (western)
Australian Lesser Noddy
Noisy Scrub-bird
Muir’s Corella (southern)
Baudin’s Black-Cockatoo
Cape Barren Goose (south-western)
Western Bristlebird
Antipodean Albatross
Southern Royal Albatross
Wandering Albatross
Gibson’s Albatross
Red Goshawk
Crested Shrike-tit (northern)
Christmas Island Frigatebird
White-bellied Storm-Petrel (Tasman Sea)
Squatter Pigeon (southern)
Partridge Pigeon (western)
Partridge Pigeon (eastern)
Blue Petrel
Malleefowl
Northern Giant-Petrel
Purple-crowned Fairy-wren (western)
White-winged Fairy-wren (Barrow Island)
White-winged Fairy-wren (Dirk Hartog Island)
Crimson Finch (white-bellied)
Christmas Island Hawk-Owl
Golden Whistler (Norfolk Island)
Red-lored Whistler
Fairy Prion (southern)
Plains-wanderer
Scarlet Robin (Norfolk Island)
Heard Shag
Macquarie Shag
Sooty Albatross
Black-throated Finch (southern)
Princess Parrot, Alexandra’s Parrot
Regent Parrot (eastern)
Superb Parrot
Western Whipbird (eastern)
Western Whipbird (western mallee)
Soft-plumaged Petrel
Kermadec Petrel (western)
Australian Painted Snipe
Antarctic Tern (Indian Ocean)
Southern Emu-wren (Eyre Peninsula)
Mallee Emu-wren
Lord Howe Island Currawong
Buller’s Albatross
Indian Yellow-nosed Albatross
Shy Albatross
Grey-headed Albatross
Campbell Albatross
Pacific Albatross
Salvin’s Albatross
White-capped Albatross
Lord Howe Woodhen
Black-breasted Button-quail
Painted Button-quail (Houtman Abrolhos)
Masked Owl (northern)
Masked Owl (Tiwi Islands)
Striped Legless Lizard
Southern Bell Frog
Centrolepis caespitosa
Dillwynia tenuifolia
Keighery’s Eleocharis
Micromyrtus minutiflora
Persoonia nutans
Pultenaea parviflora

(b) The Commonwealth areas involved were:
Bookmark Biosphere Reserve of Management – South Australia
Melbourne Airport – Victoria
Cainlea Estate, Deer Park (the former Albion Explosives Factory) – Victoria
Beecroft Naval Weapons Range – New South Wales
St Marys (the former Australian Defence Industries site) – New South Wales
RAAF Base Pearce – Western Australia
Lancelin Defence Training Area – Western Australia
Booderee National Park – Jervis Bay Territory
Pulu Keeling National Park – Cocos (Keeling) Islands Territory
Southern Ocean