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RADIO BROADCASTS

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- **NEWCASTLE** 1458 AM
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- **PERTH** 585 AM
- **HOBART** 729 AM
- **DARWIN** 102.5 FM
FORTIETH PARLIAMENT
FIRST SESSION—SEVENTH PERIOD

Governor-General

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

Senate Officeholders

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

Senate Party Leaders

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

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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(2) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Warwick Raymond Parer, resigned.
(3) Chosen by the Parliament of South Australia to fill a casual vacancy vice John Woodley, resigned.
(4) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Andrew Burke, resigned.
(5) Appointed by the Governor of Tasmania to fill a casual vacancy vice Hon. Brian Francis Gibson AM, resigned.
(6) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
(7) Chosen by the Legislative Assembly of the Australian Capital Territory to fill a casual vacancy vice Hon. Margaret Reid, resigned.

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

**Heads of Parliamentary Departments**
Clerk of the Senate—H. Evans
Clerk of the House of Representatives—I.C. Harris
Departmental Secretary, Department of Parliamentary Services—H.R. Penfold QC
HOWARD MINISTRY

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<tr>
<td>Prime Minister</td>
<td>The Hon. John Winston Howard MP</td>
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<td>Minister for Transport and Regional Services and Deputy Prime Minister</td>
<td>The Hon. John Duncan Anderson MP</td>
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<tr>
<td>Treasurer</td>
<td>The Hon. Peter Howard Costello MP</td>
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<td>Minister for Trade</td>
<td>The Hon. Mark Anthony James Vaile MP</td>
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<td>Minister for Foreign Affairs</td>
<td>The Hon. Alexander John Gosse Downer MP</td>
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<tr>
<td>Minister for Defence and Leader of the Government in the Senate</td>
<td>Senator the Hon. Robert Murray Hill</td>
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<tr>
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<td>Senator the Hon. Nicholas Hugh Minchin</td>
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<tr>
<td>Minister for Health and Ageing and Leader of the House</td>
<td>The Hon. Anthony John Abbott MP</td>
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<tr>
<td>Attorney-General</td>
<td>The Hon. Philip Maxwell Ruddock MP</td>
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<td>Minister for the Environment and Heritage and Vice-President of the</td>
<td>The Hon. Dr David Alistair Kemp MP</td>
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<td>Executive Council</td>
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<tr>
<td>Minister for Communications, Information Technology and the Arts</td>
<td>The Hon. Daryl Robert Williams AM, QC, MP</td>
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<tr>
<td>Minister for Agriculture, Fisheries and Forestry</td>
<td>The Hon. Warren Errol Truss MP</td>
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<tr>
<td>Minister for Immigration and Multicultural and Indigenous Affairs and</td>
<td>Senator the Hon. Amanda Eloise Vanstone</td>
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<tr>
<td>Minister Assisting the Prime Minister for Reconciliation</td>
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<td>Minister for Education, Science and Training</td>
<td>The Hon. Dr Brendan John Nelson MP</td>
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<td>Minister for Family and Community Services and Minister Assisting the</td>
<td>Senator the Hon. Kay Christine Lesley Patterson</td>
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<td>Prime Minister for the Status of Women</td>
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<tr>
<td>Minister for Industry, Tourism and Resources</td>
<td>The Hon. Ian Elgin Macfarlane MP</td>
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<td>Minister for Employment and Workplace Relations and Minister Assisting</td>
<td>The Hon. Kevin James Andrews MP</td>
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<td>the Prime Minister for the Public Service</td>
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(The above ministers constitute the cabinet)
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<td>Minister for Justice and Customs</td>
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<td>Senator the Hon. Ian Douglas Macdonald</td>
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<td>Senator the Hon. Charles Roderick Kemp</td>
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<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Jacqueline Marie Kelly MP</td>
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<td>Parliamentary Secretary to the Minister for Transport and Regional Services and Parliamentary Secretary to the Minister for Trade</td>
<td>The Hon. De-Anne Margaret Kelly</td>
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<tr>
<td>State and Shadow Minister for Public Administration and</td>
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Monday, 22 March 2004

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

COMMITTEES

Economics Legislation Committee

Meeting

Senator FERRIS (South Australia) (12.31 p.m.)—by leave—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 4 pm, to take evidence for the committee’s inquiry into the provisions of the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and a related bill.

Question agreed to.

Economics Legislation Committee

Membership

The PRESIDENT—I have received a letter from an Independent senator seeking a variation to the membership of a committee.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (12.32 p.m.)—by leave—I move:

That Senator Brown be appointed a participating member of the Economics Legislation Committee.

Question agreed to.

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002 [No. 2]

Second Reading

Debate resumed from 11 February, on motion by Senator Vanstone:

That this bill be now read a second time.

Senator JACINTA COLLINS (Victoria) (12.32 p.m.)—The Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2] represents a hostile takeover of state unfair dismissal laws. It has been rejected by the Senate in the past and Labor maintains that this should continue to be the case. The bill seeks to take over the state unfair dismissal systems and then to replace them with a weak federal system. The Howard government is obsessed with weakening and removing, where possible, any protections for working Australians against being dismissed unfairly. Chanting the mantra of ‘choice and flexibility’, the Howard government means a choice for employers to dismiss workers unfairly and to downgrade flexibility for vulnerable Australians.

There was a time when the Prime Minister chanted another mantra—that of states rights—but now it appears that the government is being very directly centralist. Well, not completely. For example, the Workplace Relations Amendment (Award Simplification) Bill 2002 is converse to what is occurring here. The award simplification bill would remove long service leave provisions from federal awards, leaving employers and employees to rely on various state and territory laws for long service leave. In this case, with respect to the termination of employment, the government’s core agenda is to reduce workers’ entitlements, dabbling within state jurisdictions this time to effect that change.

This bill is identical to the Workplace Relations Amendment (Termination of Employment) Bill 2002, which was defeated in the Senate on 11 August 2003. The bill has been reintroduced as a second industrial relations double dissolution trigger. The first was the Workplace Relations Amendment (Fair Dismissal) Bill 2002, which would allow all businesses with fewer than 20 staff to dismiss their employees unfairly. With respect to the aims of this bill, the government has
made it clear that there is always an array of workplace relations bills on the go in the parliament, particularly since the failure of the second wave legislation. Bit by bit, it is being re-presented to the parliament.

Since the first wave of legislation in 1996, very few industrial relations bills have been passed by the Senate—for good reason, and that is the quality of the content of those bills. Consistently, bills are presented that are against the interests of working Australians. The only workplace relations bills that have not been against the interests of working Australians arise from other sources. We have had—much to my pleasure and content—the Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003. This was demanded by the Victorian Labor government, once it was in an acceptable form. Secondly, the Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003 followed the introduction of a Labor private member’s bill.

The other 12 bills that have been in the parliament since 1999—characterised by some as the dirty dozen—further erode the capacity of working Australians to bargain collectively or further weaken the capacity of unions to represent working Australians. These bills, either directly or indirectly, remove the safety net of protection available to Australian workers. These bills are all aimed at achieving the Prime Minister’s ambition of an industrial relations environment where a single employee with weak bargaining power is pitted against a powerful employer in a far stronger position.

Let us look at changes to the federal unfair dismissal system. The bill before us today is true to form. It falls into a category of directly eroding the entitlements of working Australians not to be dismissed unfairly. The bill makes a number of changes to the federal unfair dismissal system, such as a reduction in the amount of compensation that can be awarded to an unfairly dismissed employee of a small business from 26 weeks to 13 weeks pay, an extension to the qualifying period before an employee of a small business can claim unfair dismissal from three months to six months and a narrowing of the scope for an employee made redundant by his or her employer to mount an unfair dismissal action. These changes continue to tear away at the basic protections available to working Australians. They erode the concept of a fair go and the capacity of the commission to determine what is most appropriate in each particular case.

I will concentrate on the issue of taking over state jurisdictions. With this bill the government is not satisfied to just erode entitlements within the federal jurisdiction; it seeks to extend the mean-spirited Workplace Relations Act to those workers who currently fall under state industrial relations systems. It would do this by expanding the unfair dismissal jurisdiction of the Australian Industrial Relations Commission to all constitutional corporations. This would result in the commission taking over 85 per cent of the states’ unfair dismissal systems. As I said previously, this is quite contrary to the state rights mantra of the Howard government in other respects. This will also leave the remaining 15 per cent of employees—those who work for partnerships and sole traders—under the state systems, so the bill does not achieve the government’s aim of creating a unitary system of unfair dismissal laws.

What is better characterised as a blatant grab for power cannot be justified on a number of public policy grounds. The bill was introduced less than a week after a ministerial council meeting with the states at which the federal government did not even mention that it was proposing to introduce this legislation. The federal government did not even
get agreement on these provisions with the states; it did not even go through the motions. It certainly did not follow the recommendations of the President of the Australian Industrial Relations Commission, Justice Giudice, in relation to the importance of consultation and cooperation, highlighting consultation as the way to develop an appropriate compromise on some of these issues.

Some concerns have been raised about the impact on the workload of the Australian Industrial Relations Commission. There are significant cost consequences of expanding the federal system while still retaining state systems. The government, in its own budget papers, anticipates a 75 per cent increase in the number of unfair dismissal cases brought before the Australian Industrial Relations Commission, at a cost of $16.8 million over four years. Of course, more work for the federal commission means more commissioners. I have to say that, on the government’s record of appointing commissioners, this in itself is a significant problem. The government has taken a blatantly one-sided approach to the appointment of commission members, not only on gender issues but also in terms of the backgrounds of the commissioners it has appointed. The vast majority have been from employer and business backgrounds and only one of the last 15 appointees was a woman—a sad fact highlighted in the House of Representatives during International Women’s Day.

In conclusion, the bill reduces the level of protection available to employees in respect of unfair dismissal. It overrides state laws and institutions without the agreement or cooperation of the states. This bill is justified by the government on the hollow claim of seeking a unitary system when it still leaves 15 per cent of employees in state unfair dismissal systems at a time when in other areas the government is taking away uniform national standards, such as by having long service leave revert to the various state laws. This bill yet again pursues the Prime Minister’s ambition of pitting powerless employees against employers in a stronger position and takes away existing protection for working Australians. There is nothing to commend this bill, and Labor strongly opposes it. The minister used, in the House of Representatives, the example of rail gauges. Unfortunately this would just make another track. This bill has no unitary nature. Labor, as I said in the previous debate on the bill, does support a national unitary system, but this is no way to go about achieving it.

**Senator Murray (Western Australia)**

(12.41 p.m.)—The Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2] is before the Senate a second time, and I should point out that Democrat amendments were previously rejected by both parties the first time around. The bill is now potentially another double dissolution trigger. I have concerns about it because it attempts to extend the coverage of federal law on unfair dismissals while simultaneously proposing to exempt small business from unfair dismissal law through the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2]. The failure of this bill would concern me because of those two contrary objectives.

Schedule 1 of the bill would amend the Workplace Relations Act 1996 to cover the field of harsh, unjust or unreasonable termination. It would extend the operations of the federal unfair dismissal system by covering all employees of constitutional corporations through making greater use of the corporations power in section 51(xx) of the Constitution. In Minister Abbott’s second reading speech he said that the covering the field provision meant that the percentage of employees covered by federal unfair dismissal provisions would increase from about 50 per cent to about 85 per cent and that the number
of workers covered by unfair dismissal provisions should increase from about four million to about seven million. Schedule 2 provides differential criteria for small business as opposed to large business regarding unfair dismissal by giving them a longer probationary period and other things. Schedule 3 tightens unfair dismissal processes, sharpens relevant considerations and confirms reinstatement as the primary remedy.

The first Workplace Relations Amendment (Termination of Employment) Bill 2002 was considered in March 2003 by the Senate Employment, Workplace Relations and Education Legislation Committee, on whose findings we wrote a minority report. The bill was dealt with on 11 August 2003 and rejected. The bill advances Democrat philosophy and policy in a number of respects, revisits areas we have previously rejected on principle and in practice and advances a few process improvements on unfair dismissals.

The Workplace Relations Amendment (Termination of Employment) Bill concerns me for another reason. As I said in my speech in the previous second reading debate on this bill, it represents something of a crossroads in the development of industrial relations law in this country because it seeks to cover the field in a manner which has not before been attempted in industrial relations law at the Commonwealth level. This, senators, could be a historic occasion. In recent industrial relations history I think there have been two major and significant events. The first was the Keating inspired changes to the Workplace Relations Act, or the Industrial Relations Act as it was known then, in 1993. The second was the referral of Victoria’s industrial relations powers to the Commonwealth. I believe that an amended version of schedule 1 of this bill would be the third significant event. That Keating first wave changed our IR system dramatically, from a centralised one to an enterprise based one. The Victorian referral represented a great and historic step away from a state based, fragmented and inconsistent system towards a national and uniform one.

I want to repeat briefly what I have said before on a unitary industrial relations system. This bill attracts the Australian Democrats’ qualified support because it advances our philosophy and policy on a unitary industrial relations system. As I have said many times before both inside and outside this chamber, we need one industrial relations system, not six. We have a small population, yet we have nine governments, 15 houses of parliament and a ridiculous overlap of laws and regulations. There are areas of the economy that genuinely require a single national approach. Like finance, corporations or trade practices law, labour law is one of those areas. Apart from the attractions of efficiency and simplicity, a unitary system would mean that all Australians—employers and employees alike—would have the same industrial relations rights and obligations regardless of where they lived.

This bill does advance unfair dismissal 85 per cent of the way to a unitary system for unfair dismissal. A nearly unitary system for unfair dismissal would have three prime benefits. Firstly, it would achieve for the majority of Australian workers common human rights across Australia, rights which differ at present. The second motivation is economic. Common, easily administered rules and laws make for more efficient, competitive and productive enterprises and for more efficient, competitive and productive national markets. This bill moves towards that objective. Thirdly, the bill facilitates more comprehensive coverage for workers. There have been estimates of up to 800,000 employees not covered by federal or state awards or agreements—for example, the former employees of OneTel, who would now be covered under this bill.

CHAMBER
We recognise that the bill cannot go as far as it needs to; constitutional limitations prevent complete coverage. As we have stated earlier, the Democrats are concerned that relying on the corporations power alone will still leave large chunks of employees working for non-incorporated businesses, many of these in small business with still no protection from state or federal laws. We agree that the most effective way to get a single industrial relations system would be by referral of powers to the Commonwealth by the states, as opposed to using the corporations power from the Constitution. Victoria successfully referred its powers, with Democrat support and Labor opposition, in 1997. With that referral also came a category of several hundred thousand Victorian employees under inferior employment conditions under the state law of the time. In 2003, changes were finally made to enable all Victorian workers under common rule awards to be covered by the full federal award safety net. How much better off has Victoria been with one system, not two. The Victorian Labor government have had the balance of power at any time in the recent past to take back the industrial relations system and recreate a state system. But they have not done so for the very good reason that, although Labor would once have opposed the referral in Victoria, they now recognise the value of a unitary system for that state.

Further referrals are unlikely as there are just too many vested interests, so the alternative is to use corporations power to cover the field. The NSW government have said that if the feds do that they might mount a High Court challenge. I think that would be good. If the use of corporations power to achieve a more unitary industrial relations system were confirmed by the High Court, it would probably result in these powers being more widely used to cover the field in other industrial relations areas. Unfortunately, without government support for all of the Democrats’ amendments, those particular waters are unlikely to be tested. Any government that goes the route of using constitutional heads of power must also use sense and, for the greater cause, try to adjust its law to lessen vested interests’ opposition. This bill, in its origins and its timing, regrettably had too much politics interfering with its policy, and it might have had an easier and earlier passage if there had not been that mixed thinking.

With respect to unfair dismissals, there are two main issues: process and access. On process, I believe that the federal process is the best in the country, stopping bludgers from both sides taking advantage, and there is no reason to give way on this stricter regime. Access, though, is a different matter. Concerns have been raised that some employees—such as short-term casuals, those on fixed-term or task contracts and high-earning non-award workers, trainees and managers who in some states are able to challenge their dismissal if it is unfair—would not be covered by the federal system. Since the early 1990s, employers have increased their use of casuals, contractors and labour hire forms of employment, often on a long-term basis. The growth in precarious and atypical employment has meant that, increasingly, legitimate workers are excluded from recourse to the industrial relations system as a whole. While many state unfair dismissal legislation regimes make an effort to cover legitimate employees in precarious employment, the federal unfair dismissal regime does not go far enough. In an attempt to address this issue, the Democrats previously proposed an amendment that sought to define ‘employees’. While we would still like to see a definition of ‘employee’ in the act, we recognise that at this time the government will not agree to our proposed definition. I suspect a Labor government would
not agree to that particular proposed definition either.

The Democrats have the view that we should ensure that employees who are considered such under state law but not under federal law should still be able to access the state system, and we will move amendments today to reinforce our view. We will have to continue to lobby the government on this issue and we are pleased that in our discussions with the government they have indicated that they are willing to conduct an independent review of the scope, meaning and effect of the definition of ‘employee’ for the purposes of accessing the unfair dismissal remedies under the Workplace Relations Act. Whatever the outcome of this bill and this debate, we urge the government to still do this, because the definition in law is unclear.

The other key area with respect to access is the issue of access for casuals as in a number of states casuals have better access than under the federal regime. When we first revised the unfair dismissal regime in 1996 and agreed to the government’s proposition of 12 months probation for casuals, casuals were entirely different from what they are today. Today the estimates are that there are about 2½ million Australians in casual employment, and most of those fall under the state jurisdictions.

In Western Australia and in Tasmania, both of which have Labor governments, there is a very strange provision in that there is no probationary period for casuals—which seems remarkable and unreasonable to me. In the other four jurisdictions, casuals on probation are excluded from accessing unfair dismissal laws—rightly, I think. In the Commonwealth, Queensland—where there is a Labor government—Victoria, the ACT and the Northern Territory, the exclusion period is 12 months. In New South Wales and South Australia it is six months. The question in my mind is not whether there should be a probationary period for casuals but what the length of that period should be.

In that respect, if we are going to address the growing numbers that are in this field of employment and minimise the angst of the states about those who can presently access their regimes and who should be entitled to have access to the federal regime, we think it is appropriate to produce a compromise. We have therefore shifted from our view that 12 months is appropriate to the view that six months is long enough to determine whether the casual employee is suitable for the position. Consequently, we are recommending that the standardised casual probationary period be six months. This is not a policy that the government is attracted to. For those states whose access period is less than six months we sought agreement by the government to provide a grandfather clause that on commencement of the bill would enable those casuals to still access their state regime for six months.

We did manage to reach agreement with the government in some other key areas. The Democrats drafted and gained agreement from the government to an amendment that provides a commencement date that will prevent the government from calling a double dissolution election, passing the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2] which exempts all small business from unfair dismissal, and using that bill to exempt all those caught up by the bill we are discussing today. Concerns were also raised by stakeholders that the federal unfair dismissal system would lead to reductions in the resourcing of state industrial tribunals and hence their ability to perform their other roles, and that workers in regional and rural areas who currently can attend local courts visited by state commissioners would incur increased costs to attend the
federal commission, which some expect will be based solely in capital cities.

While parts of the industrial relations system will remain with the states, the Democrats are sympathetic to the states’ concerns and propose that federal unfair dismissal cases should also be able to be heard through state commissioners by having dual state and federal appointments. The government agreed to such an amendment and worked with us to redraft our original amendment. To facilitate the expansion of the unfair dismissal regime to the federal system, the government were also willing to not insist on the small business exclusions in schedule 2 of the bill, which the Democrats oppose. As I have said before, there continues to be little hard evidence to support the view that fair unfair dismissal laws have an adverse effect on overall employment levels although there is evidence to show that unfair dismissal laws that are unfair, or that allow process abuse, do affect business attitudes to employment.

Economics aside, fundamentally the Democrats have consistently said that, on both human rights and equity grounds, we will not accept reducing the rights of employees just because they are employed by small business. The Democrats are willing to support improvements to process and hence we amended the bill to apply to all businesses the provisions on vexatious and frivolous applications. The Democrats believe that the provisions covering vexatious and frivolous applications will be another important step to reducing unfair dismissal claims that do not have merit and reducing the burden on the system to free up time and resources for genuine claims.

The list of amendments I have outlined demonstrates that the Democrats have been talking at length with the government to find common ground. To their credit, the government moved considerably on a number of issues. Where does that leave us today in this chamber? The sticking point is that while the Democrats desire a unitary industrial relations system, we will not do so at any cost. As I stated earlier, access to the unfair dismissal regime is important. We cannot use this historic opportunity to come to an agreement, because we cannot get the government to compromise on reducing to a fair and reasonable period the probation period—which we think should be six months—for casuals to access unfair dismissal laws. And this is a pity.

If this bill goes down, I hope that after the election, if the coalition is returned, the government will return to this issue with us. I hope—but I think it is a vain hope—that if Labor is returned they will also recognise that it is about time to bite the bullet and take some of these issues away from the states. It is important for Australia that we move towards a unitary industrial relations system. In the meantime, while the bill has been a very contentious issue for a number of parties, in particular the states—especially some of the states’ trades and labour councils—it has brought to the fore a supposed willingness of various state governments to be involved in discussions about a harmonised national approach so long as it is done in a consultative and cooperative manner. I have read the history of such things and they come in waves; I do not have high hopes about that but perhaps I am being cynical.

The states noted that the federal government have yet to make any genuine attempts to elicit cooperation—and that is a great pity. It is interesting to note that many parties in this debate—including some members of the opposition, unions and industry groups—have expressed a desire to move toward a unitary system. My own strong campaigning in this area has led me to an understanding that more and more people are starting to
accept its desirability and are trying to work towards making it a reality. There is obviously still the problem of agreement, and I suggest—to whichever government gets returned at the next election—that it would be valuable for a summit to be held to bring all parties concerned together to try and explore ways in which a national unitary system can be advanced. I hope that by now our amendments have been circulated. We will be dealing with those in committee.

Senator SANTORO (Queensland) (12.59 p.m.)—I very much appreciate the thoughtful contribution of Senator Murray to this debate. I think Senator Murray speaks a lot of sense and I thank him for the support in principle that he extends to the government in terms of the Workplace Relations Amendment (Termination of Employment) Bill 2002. The point I would like to make to Senator Murray is that this bill represents a beginning: the beginning of a journey along a road that obviously Senator Murray wants to travel—and which would be of enormous benefit to Australian small businesses. I would like to comment on some of the issues raised by Senator Murray, particularly in relation to the debate about the 12-month versus the six-month probationary period.

I have considerable experience in terms of that debate because one of the more tricky questions I had to navigate through a parliament that I previously served in—and I had the privilege of serving as the minister for industrial relations in the Queensland parliament—was exactly that point of 12-month versus six-month exemptions from unfair dismissal provisions for small businesses with under 15 employees. At that stage in Queensland we basically had an ‘upper house’ of one in the very well-meaning, intelligent and constructive Independent, Mrs Cunningham. After consulting extensively throughout the community, we agonised over whether or not we as a government would introduce legislative provision that would exempt for either six or 12 months small businesses with 15 employees or fewer from the application of the unfair dismissal laws of the government that I was a member of. All the feedback I got from small businesses was that they preferred the 12-month exemption as opposed to the six-month exemption. There were many reasons stated for that preference.

Nevertheless, after an extensive consultation process, the then—and still—Independent member for Gladstone, representing the very strong industrial electorate of Gladstone, which was previously held only by the Labor Party, and I agreed that the 12-month exemption from unfair dismissal laws would be more appreciated by businesses. I suppose the proof of the pudding is in the eating. During the two years that those laws applied, there was record employment growth in Queensland, particularly within the small business sector. I will not say that we created that; sometimes I think politicians take on the mantle of job creation too easily. It is the economy, particularly the small business sector, of states—and indeed national economies, such as the Australian economy—that is the biggest generator of employment. Just over 40 per cent of all full-time jobs generated by business and small business in Australia were generated in Queensland at that time. I think those legislative provisions I have just referred to contributed somewhat to that.

The other interesting point Senator Murray made is that there is some reluctance by various states to agree to a unitary system of unfair dismissal laws. I must admit that, when I was representing a state jurisdiction—and without the benefit of the rather unhelpful experience of now having Labor governments right across Australia—I was a pretty strong defender of a state system of industrial relations. There are a lot of players...
in all states, including Queensland, who have sinecures—who have positions to protect, I suppose, if I can put it that delicately—who would be opposed to the bill being debated in this place today. But, with the passing of time, I have become a convert—at least in terms of the provisions of this bill—to the concept of a unitary system as it applies to unfair dismissals.

Senator Murray mentioned the experience of Victoria and the fact that Victoria has not reverted to a state based industrial relations system. Senator Murray, I am sure, would appreciate, like all of us, that Victoria really did not give up that much when that state’s industrial relations powers were taken on by the federal government. The bulk of the workers—or should I say employees; we are all workers, aren’t we?—within the Victorian economy were, in fact, generally covered by federal awards and the federal jurisdiction. I suppose it is not surprising that the Victorian government does not have much incentive to take back jurisdiction which, in many ways, it did not have. Certainly I appreciated Senator Murray’s contribution and I thank him most sincerely for making it. I say to Senator Murray: the moment is now. The opportunity to provide relief to businesses who have operations across the multiplicity of the often unfriendly state industrial relations jurisdictions is now, and we can make a start today. I hope that, as the debate progresses, the attitude of the Democrats towards this bill will become even more benign than it currently is.

Certainly the government believes that a more unified national workplace relations system means less complexity, lower costs and more jobs for all Australians. It means providing special relief for small businesses confronted by unfair dismissal claims. It means further streamlining the handling of claims generally in the federal arena. The government’s workplace relations system is working: there is more employment, there are fewer strikes and there are better prospects for businesses and employees of businesses as a result of that industrial relations environment. I respectfully suggest to this place that Labor, through its strident ideological opposition to this bill, is trying to kill all of that off.

Labor sees the bill we are debating today as a hostile takeover of state unfair dismissal laws. Labor sees it as some sort of constitutional assault—never mind that it proposes to use only existing Commonwealth powers. There is no Labor style constitutional vandalism involved in this particular initiative. Labor’s spokesman in the other place, the member for Rankin, says that wherever possible the Howard government is obsessed with weakening and removing from working Australians any protections against being dismissed unfairly. That is the big union line, of course. We should not be surprised at that; the opposition does get its marching orders from the union movement, after all. It is interesting to contrast Labor’s bleak vision of the workplace relations landscape with the reality. Perhaps the member for Rankin is hiding an unsuspected Cezanne in his closet; he is apparently pretty big on impressionism.

The Australian Chamber of Commerce and Industry says that the Labor Party’s industrial relations platform that it adopted at its national conference in January would adversely affect the interests of private employers and compromise economic development. The ACCI represents commerce and industry at the sharp end of the business, where the profits and losses are made. Business is in the business of making a profit. Labor, it seems to me, is in the business of making sure that business does not make a profit—indeed, that it makes a loss. According to the ACCI the additional costs Labor would impose on business through further regulation and heightened trade union activ-
The ACCI has called on the Latham Labor Party to at least match the policy vision—and we on this side of the chamber are always happy to give credit where credit is due—adopted by former Prime Minister Paul Keating for a less centralised workplace relations system. Now here is a chance for the Labor Party. Here is an opportunity for it to do what it claims to do best: go back to the past. This would only be a modest shift backwards, after all. The ACCI is not suggesting the ALP should go as far back as it apparently wants to in terms of industrial relations. The ALP wants to pretend this is 1904, not 2004. The ACCI is only suggesting it gets into Mr Latham’s time machine for a swift flit back to the 1990s. The ALP must be able to manage that modest excursion if it claims, as it does, that it can go right back into history to find its industrial relations policies.

In the context of the bill before us it is instructive to list the areas of significant concern to the ACCI—and the hundreds of thousands of businesses, mainly small businesses, that it represents—in terms of Labor’s workplace relations policy for the 2004 election. These areas of significant concern include increased regulation of workplace bargaining; acceptance of industry wide agreements, in other words, pattern bargaining; abolition of Australian workplace agreements and individual bargaining rights; removal of the ACCC jurisdiction over secondary boycotts; arbitration of non-agreed bargaining demands; expanded AIRC powers and award regulation; expanded union right of entry and employer obligations to assist union activities; rights for casual employees to convert to part-time employment; regulation of contractors; facilitation of schemes for portability of employment conditions; paid maternity leave implications for employers; national entitlements scheme implications for employers; expanded eligibility for claiming unfair dismissal; and union participation in government tenders and procurement.

No doubt those opposite would like to characterise the ACCI’s obvious problem with Labor Party policy as just another Tory tall story. But the ACCI does not campaign for or against political parties. It is not against Labor. It is, although it would be far too well-mannered to put it in these terms in these circumstances at this time, against stupidity. That is the sort of thing the ACCI is talking about. We should acknowledge that the ACCI notes that productivity could still be improved—and the government agrees with this hypothesis. Further improvement to productivity and to the employment prospects and wealth of all Australians is indeed what this workplace relations bill and others that have been through this place—some without very much success—are all about.

The ACCI lists the reforms and benefits of the government’s industrial relations policies. The ACCI does base its proposals for reform on the extensive consultation that it undertakes with its vast membership. The benefits are higher real wages, at 3.6 per cent growth a year, which is higher than inflation; lower interest rates because of lower inflation; fewer disputes and strikes, and it is worthy of note that under the Liberal coalition government industrial disputation in this country is at its lowest since 1913; record employment, with more than 9.6 million Australian jobs; and lower unemployment, at 5.7 per cent, the lowest in 22 years. How anybody can rail against the further reform of an industrial relations system that has produced those reforms and those benefits for all working Australians and all employees really defies comprehension and understanding.
In these circumstances it is hard to see where the member for Rankin in the other place has gained the impression that this bill represents a naked grab for power by the government. Something that we on this side of the house are very much concerned about is employment security. We are as much concerned about employment security as we are about employment growth. This bill is designed to place employment continuance in the forum where these things, subject to legislation and normal rules of conduct, are best settled. In the broader scheme of things, a union, for example, is not ideally suited to the role of employment agent, as it constantly seeks to interpose itself; exactly the reverse, indeed, is more likely to be the case. Most employment in the private sector in Australia takes place in an environment from which organised labour in the old sense is absent. Overwhelmingly small business is the employer of Australians. Small business should not be held to ransom by big unions running a political agenda; it really is as simple as that.

In order to illustrate the sense of this legislation I would like to refer to a case that came before the Industrial Relations Commission in December. This very interesting case illustrates precisely the kind of difficulty this bill is designed to overcome. In this case, someone who claimed to have been dismissed contrary to provisions in Western Australian industrial legislation was determined, by a hearing in the Australian Industrial Relations Commission, to be able to proceed under federal law. The case itself first turned on matters of timing—whether the applicant’s claim had been lodged within the legislated time frame. It is worth reading the relevant parts of the decision made by Commissioner Thatcher of the AIRC in Perth on 8 December 2003. I propose to do so now. It will not take long. For those interested, the AIRC decision in question is U2003/6516. The issue was whether there was an acceptable reason for the applicant’s delay in lodging her application. Commissioner Thatcher found as follows:

Counsel for the applicant was critical of the existing jurisdictional arrangements “which confuses sometimes even the most knowledgeable legal minds in the sense of which jurisdiction to go to” and submitted that “the system is just incomprehensible to the ordinary person”.

He went on to say:

The irony is that it cannot be concluded that this case was one of representative error with—

the applicant—

being provided by her adviser with the form for the wrong jurisdiction. Nor can it be concluded that the delay was because—

the applicant—

had been proceeding in the wrong jurisdiction. This is because the Western Australian Industrial Appeal Court decision in City of Mandurah v Hull has been interpreted by the WAIRC to mean that it has jurisdiction to hear and determine applications from employees covered by federal awards and certified agreements whose services have been terminated on grounds that the employee had been harshly, oppressively or unfairly dismissed.

Therefore had—

the applicant—

not been influenced not to proceed to lodge the completed Form 1—

the Western Australian form—

when she presented it to the registry, the claim would have been lodged within the prescribed 28 days after the date of termination in the state jurisdiction and proceeded to be determined by the WAIRC without any need for an extension of time for lodgement to be granted.

Commissioner Thatcher went on to say:

Clearly, the apparently overlapping federal and state unfair dismissal laws that operate in Western Australia confused the applicant, like many laypersons. Given that the two systems are by no means harmonised, she was in no position to as-
sessment for herself the relative advantages and disadvantages of proceeding in the Western Australian jurisdiction on the grounds that she had been harshly, oppressively or unfairly dismissed from her employment or in the federal jurisdiction on the grounds that her termination of employment was harsh, unjust or unreasonable. If her evidence is accepted, not only was she confused by the complexity but the public servants she spoke to were also.

He went on to say:

No similar jurisdictional issues apply in respect of the application that relate to alleged contraventions of sections 170CK, 170CL, 170CM and 170CN of the federal act as there are no similar provisions in the Western Australian Industrial Relations Act 1979 and therefore no such claim would have been contained on the Form 1 that the applicant had been intending to lodge in the WAIRC.

There you have in a nutshell the precise set of difficulties that this bill we are debating here today is designed to resolve. I have chosen that particular case amongst several others that I could have chosen to speak on because it is one that relates to a jurisdiction that I know Senator Murray is very much concerned about, that being WA jurisdiction. The government has reintroduced this bill because it believes that a more unified national workplace relations system means less complexity, lower costs and more jobs. The evidence for reform achieving these outcomes is very clear. What is not clear is why the Labor Party continues to try to water down the rights of Australians to continue to work in secure jobs and, if they are dismissed, to make unfair dismissal applications. The unfair dismissal jurisdiction that exists under the federal act exists for a very simple reason—that is, if people are to be dismissed they ought to be dismissed fairly; and if they are dismissed unfairly they ought to have a remedy. I would have thought that goes to the very heart of employment security, that you are preventing employers from dismissing people unfairly and for the wrong reasons or for not properly giving them warnings and so forth.

It was an interesting contribution by Senator Santoro. I assume, from what he read out, that it was an extension of time application where the commission actually had regard to the complexity of the dual system for the purposes of excusing the applicant’s failure to lodge on time. That appeared to be the gist of the quote of the judgment that was read out.

Senator Santoro—The gist was that none of the parties understood.

Senator WONG—If none of the parties understood, we could have amendments to the act which harmonise the state and federal systems. That would actually deal with the issue. Frankly, that is the fault of this government and its drafting of the provisions of the Workplace Relations Act. I would acknowledge, as a person who has previously practised in the jurisdiction, that it is extremely difficult for a solicitor, let alone a layperson, to work out precisely what the extent of the Commonwealth jurisdiction is. Yes, we should have the act drafted more clearly. Yes, perhaps we should have better harmony between the state and federal systems. But to move from that proposition somehow to the proposition that that means the federal government ought to be able to
override state legislation in relation to unfair dismissals is a very long bow to draw. It is an illogical and inconsistent step. The reason it is illogical and inconsistent is that this government is not interested in taking a logical and consistent approach to dealing with any of these industrial relations issues. It takes an approach which is based on ideology, which is based on continued attempts at watering down industrial rights both for unions and for individual workers, and that has been consistently the theme of the industrial relations legislation that we have seen before this Senate. That also is the basis of the bill we have before us today.

I want to turn briefly to the particular policy agendas which are set out or explicit in this legislation. First, the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2] seeks an exclusive jurisdiction for unfair dismissal to the extent that the Commonwealth parliament is able to legislate. Second, it introduces a separate criterion for small business. Further, it seeks to prevent unfair dismissal arising for operational reasons. Finally, it attempts to impose a limit on compensation by various means.

Properly understood, this legislation is an attempt by the coalition government to use the power available to it at the federal level to reduce the rights of working people in Australia. Properly understood, that is the objective of this legislation. So we can have a discussion at a principled level about unitary industrial relations systems, but if you really consider what this legislation is about it is essentially about reducing the rights of individual workers and using the legislative power of the Commonwealth parliament to swing the balance away from workers and towards employers. Obviously, there is a political context to this legislation as well. We have state Labor governments and we have a Liberal, or coalition, government in power in Canberra. Naturally, what has occurred is that the coalition is attempting to use the political power that it does have at the federal level, given that it does not have a majority in any of the state legislatures, to shift the balance in the system to employers.

This is not a new proposal. We have debated similar legislation previously in the Workplace Relations Amendment (Termination of Employment) Bill 2001. Nor is this a new approach. One only needs to go through the record of this government when it comes to industrial relations to see quite clearly who the ideologues in this debate are. We hear a lot of complaint from the other side about those of us on this side who actually believe in fair and balanced industrial relations, in the right of workers to organise collectively. We hear a lot of criticism from the other side, accusations of us being political lackeys and various other insults which are hurled across the chamber.

I say to this chamber and also to anyone who happens to be listening: the real ideologues in this debate are to be found on the other side of the chamber. That is quite apparent if one goes through the bills currently before the Senate and also the acts which have previously been passed. I will go through a few of those because it seems to me that they are thematically consistent with the legislation that is before us. We have had the transmission of business act, which was an amendment of the Workplace Relations Act, whereby the transmission of business provisions in respect of certified agreements were altered, enabling employers to not remain under an existing certified agreement on the transmission of the business. Again, it was a diminution of the rights of employees if the business was sold whereby they might have had an agreement with one employer and, the business being sold, they then could be left without that agreement in place. There were some Democrat amendments but that...
essentially was the intent of the government’s legislation.

We have had the fair termination act 2003, which excluded casual employees from accessing unfair but not unlawful dismissal remedies unless they had been working for 12 months. We have had the prohibition of compulsory union fees act which prohibited the payment of bargaining services fees and the inclusion of bargaining services fees in agreements and voided existing clauses. We have had the genuine bargaining act which increased the powers of the commission to make orders which, clearly, was directed primarily at trade unions. We have had the Workplace Relations Amendment (Tallies and Picnic Days) Act which sought to remove union picnic days and meat industry tallies from federal awards, although the bill was amended. We have had the termination of employment act 2001 which introduced a three-month qualifying period and had other restrictions put in place. We have had the Youth Employment Act 1999 which allowed pay rate discrimination to continue.

In terms of bills before this parliament, we have had a number of pieces of legislation which the Senate is going to be considering over these coming months. We have had the Building and Construction Industry Improvement Bill 2003 which banned pattern bargaining and any industrial action that was not protected, restricted union rights of entry and limited the operation of state law. We have had the Workplace Relations Amendment (Better Bargaining) Bill 2003 which, amongst other things, seeks to deny access to protected industrial action during the life of a certified agreement, even over claims not addressed in the certified agreement. We have had the Workplace Relations Amendment (Award Simplification) Bill 2002, which has been referred to a legislation committee, which seeks to make a number of award matters non-allowable, including matters such as long service leave, jury service, transfer between work locations, and public holidays above those specified in the award. We have had the Workplace Relations Amendment (Choice in Award Coverage) Bill 2004 which seeks to reduce the scope of federal awards safety nets. And we have had the fair dismissal bill, which is already a double dissolution trigger, which sought to exclude employees of small businesses—that is, people employing 20 employees or fewer—from making any unfair dismissal application in the federal jurisdiction.

These are some of the bills which the Howard government has pursued, or is pursuing, in relation to industrial relations. They are clearly pieces of legislation aimed at reducing existing rights and conditions of Australian workers. How the government can continue to trumpet its credentials as a government interested in employment security when it is regularly and consistently seeking to abrogate rights which currently exist is, frankly, beyond me. Perhaps the answer is to be found in the attitude that has been displayed in previous debates in this chamber by Senator Abetz and Senator Santoro. Senator Santoro in an interchange with Senator George Campbell on 2 March stated:

... you deserve to be treated with the contempt that you and your union movement are treated with.

Senator Abetz in the second reading debate on the codifying contempt offences commented:

Who said dinosaurs were extinct? We have just heard from one and it seems to be back to Jurassic Park days with Senator George Campbell’s contribution.

Hansard is replete with accusations that persons on this side of the chamber were previously trade union officials, which seemed to me to be a rather odd accusation. But that seems to be part of the rhetoric from the
other side no matter what the legislation is before the parliament.

I go back now to some of the comments made by Senator Murray, because he did make some important comments regarding the Democrats’ position. Senator Murray articulated what I understand the Democrats’ position to be—that they support a unitary system in principle. Let me say this to the Democrat senators: the Labor Party respectfully disagrees with their position and in the current environment we say that that analysis really is acontextual and apolitical. There are quite a number of issues to do with both the legal and jurisdictional context and also the political realities we are currently in which would preclude, we say, moving to a unitary system.

The first is a simple one about the constitutional limitations of the federal parliament. Without going through the details of how the federal parliament can legislate with respect to industrial relations, the reality is that the jurisdictional basis for any industrial relations legislation in this parliament is naturally more limited than what can be passed in most of the state legislatures. For this reason there are quite a number of issues to do with both the legal and jurisdictional context and also the political realities we are currently in which would preclude, we say, moving to a unitary system.

The political context which I would ask the Democrats to have regard to is this: it is patently obvious that we have a federal coalition government and we have state Labor governments. Any move by the federal government to impose a unitary system is clearly a politically motivated move. That is also demonstrated by the provisions of this bill. If we are to move to a unitary system, let it be negotiated and not imposed. It is remarkable that the government, which often trumpets about state rights, is seeking to walk roughshod over state legislatures in an attempt to impose its politically motivated system on the states.

Second, and I say this having had some experience in industrial relations prior to coming into parliament, my impression of state legislation and state commissions is that sometimes, not always, they are more at the coalface than the federal commission. Often, certainly in South Australia, it was easier for employees, even those who were not represented, to deal with applications via the state legislation than applications via the federal legislation. It was a process, a procedure and, frankly, a piece of legislation which was far more user friendly than the federal system.

I say to the Democrats that there are two main principles which ought to be considered before any consideration of a unitary system. First, any unitary system must be
negotiated and not imposed on the states and, second, it cannot be a situation where the federal system is imposed for the purpose of establishing a lowest common denominator. Those two issues are not met by this legislation. In fact, those two issues are clearly transgressed by the bill that is before the Senate. For that reason alone, apart from the other policy reasons, this bill should be rejected.

Senator HOGG (Queensland) (1.33 p.m.)—I rise to oppose the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2]. I do so now and have done so on a number of occasions because fundamentally the bill is flawed, it is wrong and it picks on those who are most vulnerable in our community—those people who are casuals, who are placed in the most precarious employment and who, of course, should be deserving of the greatest protection and not the least protection that a parliament can afford people in the paid work force.

The government have thrown themselves boots and all into this piece of legislation again. It is interesting to read the second reading speech, which has not changed since the last time the second reading speech was made on the previous bill. One must ask how genuine the government really are in pursuing this issue when they have put no thought into the bill whatsoever. It is interesting to note that in the second paragraph of the second reading speech—and if the government were half genuine then they would achieve this—they said:

Maintaining six separate industrial jurisdictions makes as much sense as keeping six separate railway gauges.

At this stage the government have not moved to change the railway gauges in any of the states of Australia. Maybe they should try to achieve that first before worrying about dis-mantling people’s rights and conditions. But then you still have the same throwaway line in the second reading speech where the government said:

A more unified national workplace relations system means less complexity, lower costs and more jobs.

Having given that throwaway line in the second reading speech they hope that if they repeat it often enough it will become the truth. They do not at any stage try to substantiate any of their claims in the second reading speech.

As I say, the fact of life is that this will greatly affect casual employees who are in the most precarious of employments anywhere in this country. In my state in particular, the state of Queensland, the federal jurisdiction has no capacity for common rule awards. Common rule awards in Queensland have a catch-all mechanism where those who are covered by a list of callings, or an application clause in particular in an industrial award, gain the benefits and rights of that industrial award. That is very important. Those state awards in Queensland, and there are many employees who are picked up by state awards where they are not covered by federal awards or federal agreements, provide access to a range of conditions such as working hours, starting and ceasing times, sick leave, rosters, unfair dismissal laws and a raft of other conditions which are bestowed upon them through the state system.

Whilst I heard that Senator Santoro has been down the road to Damascus and is looking for a unitary system now, that is quite different from when he was the state industrial relations minister in Queensland. No evidence has been put forward by the government or any of the government senators in this debate which would justify the abolition of the state system in the state of Queensland and going down the path of a
federal industrial relations system separately and by itself.

The bill, as I said, takes away fundamental and basic rights of people. In the second reading speech, again which has not changed, the government referred to the Melbourne Institute of Applied Economic and Social Research study, which, among other things, found that almost a third of businesses did not know whether they were covered by federal or state unfair dismissal laws. The good part about that is that two-thirds did know whether they were covered by state or federal jurisdictions. That is indeed a very high rate of response when one considers a lot of other surveys that are undertaken. The second reading speech said:

If business managers are confused by this complexity ...

But there is no complexity at all. If an employer in the state of Queensland is not covered by a federal award or agreement then they are caught up under the state laws and the state industrial relations system. So there is no complexity. It is quite the opposite. From my long experience of being a trade union official and of still being a practising trade union official, I know that if there is a doubt in the mind of the employer they will approach their own industrial organisation of employers to find out whether they are covered by a state or federal award system. It is amazing how quickly, when faced with a difficulty, an employer gets on the phone to their representative union of employers.

Over a long period of time as a trade union official in Queensland it has been my experience that very few people in small business are affected by unfair dismissal claims, particularly in respect of casuals but even in respect of full-time employees. As the president of my branch of the SDA I sit as an honorary official at the monthly executive meeting, which I attend. Over the nearly 7½ years that I have been the branch president and over the 15 years before that that I was the branch secretary it has been my experience that very few, if any, applications come forward for casual employees in either big or small business and very few, if any, applications come forward on behalf of full-time employees where they are employed by small businesses. So what we are playing with here in terms of the government’s bill is a red herring. It is something that they hope to use for political gain. I can understand that. That is what politics is about. But at the end of the day we are dealing with the life, lifestyle and livelihood of people, as I have said previously in this debate, in the most precarious form of employment. This bill undoubtedly attacks those people.

The desire to extend the qualifying period has no sense or reason and should not be entertained by this parliament. It would, in effect, make even more tenuous the contract of employment for casual employees. It would make them even more attractive to the employer, to be churned out as part of the employer’s program of turning over their staff to ensure that they kept casuals up to and including the minimum period, dispensed with them and replaced them with new employees, thereby avoiding any legal obligations that they might have to casual employees beyond a set period. Regardless of the period, we are looking at people being denied their rights and having their rights removed when, in effect, as I said, they should be given more protection than any other employee, even when one considers full-time employees.

There is no evidence that this measure will boost employment opportunities in industry. There is no evidence that it will make it fairer for casuals. All it will do is put them in a worse position relative to other employees in the industry. Casuals will become the fodder of the industries. That would be a
most unfortunate thing indeed. When one looks at the people who take up casual employment, you generally find that they are young people and women—people who are least able to defend themselves in many instances and who have the weakest voice in defending themselves. They are going to be placed at risk under the bill that the government are putting forward here today.

It is worthwhile turning to the submission by the Queensland government that was reported in the consideration of this bill’s predecessor by the Senate Employment, Workplace Relations and Education Legislation Committee back in March 2003. The reasons that the Queensland government opposed it sum up very succinctly why this bill should be defeated. I will go through the report very briefly rather than try to paraphrase it. At page 20 the report says:

The submission from the Queensland Government points out that far from resulting in improved legislation, as the Government claims—that is, the federal government—the report then lists a number of dot points, the first of which says:

- two different sets of federal laws and procedures governing unfair dismissal matters, depending on the size of the respondent;

That is complex, it adds to the complexity and, as I said, leads to employers artificially maintaining the level of employment within their businesses such that they fall under one part of the legislation or the other. The second dot point says:

- different federal and state unfair dismissal regimes for incorporated and unincorporated entities;

That is straightforward. The third dot point says:

- different federal and state unfair dismissal regimes for incorporated entities, depending on whether they meet the definition of a ‘constitutional corporation’;

Again, that is straightforward. The fourth dot point says:

- concurrent but separate federal and state jurisdiction over different aspects of workplace relations in the one business, for example a federal regime governing a business’ unfair dismissals and a state regime governing workplace harassment and industrial disputes;

If that is not complex, I do not know what is. Instead of bringing together a simplified system, the government are seeking to make the system even more complex, according to this report and according to my submission in this matter. The last dot point says:

- concurrent but separate federal and state jurisdiction over different aspects of the one employee’s claim (for example, the federal regime for unfair dismissal and the state regime for insufficient notice or unpaid entitlements).

So I think it is pretty clear. It is as succinct as one would need to get as to why this legislation deserves to be defeated in this chamber. But the summation really goes to the point of what this is about. It says:

Therefore, a state award employee of a constitutional corporation with a claim for unfair dismissal and withholding of wages would need to lodge claims in both federal and state jurisdictions, one for the unfair dismissal component, and the other for the wages component. Employers, who complain now about time wasted in court under the current law will find the regime proposed under this bill to be even more onerous.

That is the last thing that is needed in the industrial relations system. The industrial relations system needs to be relatively simple. It does not need the complexities that the government are trying to impose here. But even if it is simple, whether it be federal or state, it needs to respect the basic rights of those people who are least able to defend themselves, as casual employees are. They need to be protected at all costs. In a society
where we have seen the growth of casual work right across a range of industries, we now see more and more people being exposed and being made more vulnerable to the quite strong power and position that an employer occupies in the relationship between a casual employee and an employer. If one looked up an appropriate legal definition of 'casual employee', one would find that those people have a contract that operates on a day-to-day basis. They have never, by virtue of the definition that has been tried and tested over a long period in the industrial jurisdictions throughout this country, been placed on a firm footing in terms of their employment. It has always been precarious employment.

Contrast that with the employment that is offered to part-time or full-time employees. Part-time or full-time employees are employed on a week-to-week basis and there is a prospect there of an ongoing employment relationship. But what we see in the bills that are being dished up by this government is nothing more than seeking to weaken as much as they can the relationship between a casual employee and their employer, placing them in as great a disadvantaged position as they possibly can and thereby making them infinitely more attractive than part-time or full-time employees would otherwise be.

What is really needed for people in the work force is some degree of security. When one talks to people who are seeking employment out in the real world, one finds they want security of employment—they want a real prospect that they will be employed from one week to the next. They do not want to be placed in the invidious position where there is a sword hanging over their head each week and they know that they could get the chop purely and simply because the nature of their contract is a fickle one.

The legislation that the government have put before us today—and it is the case with other pieces of legislation, as I have said—does nothing more and nothing less than weaken the power, the dignity and the strength of those people who are employed casually. Of course, if the government had their way, they would also weaken the employment of full-time and part-time employees. That has been tried in other pieces of legislation, as mentioned by Senator Wong in her contribution to this debate. She mentioned how the government have tried to make the employees of small businesses exempt from certain provisions of the acts.

There is no justification for this whatsoever, other than to give the employer an unprecedented power over the working life, the livelihood and lifestyle of people who have been able to achieve, unfortunately for some people, no form of employment other than casual employment. Anything that prejudices casual employees needs to be exposed for what it is. It is something that clearly removes their dignity and places them at a severe disadvantage compared to other employees in the work force. The government have presented nothing new in this bill whatsoever. It is purely and simply a political stunt, regurgitated such that at some stage, if they desire, they may use it for the purposes of a double dissolution trigger. It deserves what it will get in this chamber, and that is to be beaten and beaten resoundingly.

Senator FORSHAW (New South Wales) (1.52 p.m.)—Here we go again. The first item of legislation, the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2], that this government has before the Senate this week is a rehash of a bill presented to this parliament last year and defeated. As my colleague Senator Hogg has just so eloquently pointed out, there is nothing new in what the government is putting forward on this occasion. Indeed, all the ar-
arguments advanced by the government in support of this bill, which were soundly rejected on the last occasion, are simply regurgitated again. One would have thought that this government would have far more important matters to focus on at this time than just bringing back an old piece of legislation for some ideological purpose and for the purpose of lining up another double dissolution trigger. When the bill was presented for the first time in August last year I stated:

Since 1996, when the coalition government came to power, there have been over 50 separate pieces of industrial relations legislation introduced by the coalition government. In nearly all cases they have been directed at reducing entitlements for workers, removing their rights, targeting particular groups of workers—such as those in small business—and creating inequitable situations for them. They have been about promoting non-unionism. They have been about limiting the ability of democratic trade unions to function within the industrial relations system.

Those words were true then and they are true today. This legislation will do nothing to streamline industrial relations legislation around this country. It will do nothing to bring about a fairer or simpler system, as the government claimed in its second reading speech. This legislation will do nothing to bring about a uniform and harmonised set of industrial relations laws. These claims about uniformity, national consistency, harmony and a fairer, simpler system are all rhetorical flourishes that the government is engaging in. But any person who has ever been remotely involved—let alone in any detailed way—with industrial legislation in this country knows that those principles are totally at odds with what this legislation seeks to do.

What does the bill do? What it does is to actually remove from the jurisdiction of the state industrial relations commissions the ability of those commissions to determine unfair dismissal cases for employees employed by corporations. With the stroke of a pen, if the legislation is passed, it will overturn more than 100 years of history in some cases, such as the history of the New South Wales industrial jurisdiction. The jurisdiction has a fine record of ensuring industrial harmony and stability within the state of New South Wales during those years and has done so, I might say, in cooperation with the federal jurisdiction. The bill relies on section 51(xx) of the Constitution—that is, the section known as the corporations power. As we know, the Constitution states:

51. The Parliament shall ... have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

\[(xx)\] Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth ...

It is a head of power that is focused upon the management of foreign corporations and financial and trading corporations. It is a power that was put into the Constitution to regulate essentially commerce, both domestic and international, in its impact upon Australia. But the government is using this head of power to emasculate the state commissions’ ability to determine unfair dismissal cases. It is not relying upon the head of power in the Constitution directly referable to industrial relations—that is, the power under section 51 (xxxv). That is the power which speaks about the Commonwealth having the right to pass laws for the prevention and settlement of industrial disputes. That is the head of power under the Constitution that has been used since 1904. This year is the 100th anniversary of the first Conciliation and Arbitration Act. That is the head of power that has been used to regulate the Commonwealth’s involvement in industrial relations.

But this government knows that it cannot rely upon that power, so it is seeking, by a
backdoor means, to use the corporations power to take away the rights of state jurisdictions. This legislation is simply an abuse of that power. I might point out that the High Court has recognised that the corporations power itself does not extend to giving the Commonwealth total control over the operations of all corporations or all companies. For instance, the Commonwealth does not have the power generally to regulate the incorporation of companies. The fact that we have a corporations power under federal law in this country today is because each of the states has agreed with the federal government to enact uniform companies law. That is the way you bring about national consistency and national uniformity. You do it in consultation and in cooperation with the states. But this government has had no consultation with the states. It has not sought any agreement with the states to bring about a uniform system of industrial relations. It has not had any discussions with the states about taking away their unfair dismissal powers. What it has done is simply put forward a bill in the federal parliament which, if passed, would take away the powers of the states in that regard. That is an abuse of process. It is not about preventing or settling industrial disputes. It is about trying to create even more disputes.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

National Security: Terrorism

Senator Faulkner (2.00 p.m.)—My question is directed to Senator Hill, representing the Prime Minister. Did the Prime Minister direct his Chief of Staff, Mr Sinodinos, to ring AFP Commissioner Keelty immediately following Mr Keelty’s interview on the Sunday program on 14 March? Why didn’t the Prime Minister ring Commissioner Keelty himself? Why didn’t the Prime Minister ensure that Commissioner Keelty was contacted through the proper channels—that is, the Minister for Justice? Given Commissioner Keelty’s status as AFP Commissioner, a statutory office holder, was any legal advice sought either before or after Mr Sinodinos’s phone call as to the appropriateness of Mr Sinodinos contacting Mr Keelty on this matter?

Senator Hill—I have some information on this matter. I do not think it would be a surprise to the Senate that there is at this time—when there is significant focus on national security issues; greater focus, perhaps, than on other occasions—a regular contact in such circumstances between the office of the Prime Minister and his department and the Commissioner of the Australian Federal Police. There are also significant and extensive communications and collaborations between relevant agencies concerned with intelligence and security matters. The content of these discussions must, necessarily, remain confidential. Last week there were discussions between the Prime Minister, his chief of staff, the secretary of his department and the commissioner. They arose from the commissioner’s interview on Channel 9 on Sunday, 14 March. There was nothing improper about these discussions. They respected fully the operational role and independence of the Commissioner of the Australian Federal Police. As has been said before, the Commissioner of the Australian Federal Police continues to enjoy the full confidence of the government.

Senator Faulkner—Mr President, I ask a supplementary question. I note that the minister’s answer did not go to any of the issues that I raised with him. If the minister cannot inform the Senate whether Mr Sinodinos was directed to contact Commissioner Keelty by the Prime Minister, I would appreciate it if he would take it on notice. As to the information as to why the Prime Minister did not ring Commissioner Keelty himself or
the other questions asked, if the minister is not willing or not able to provide this information for the benefit of the Senate, I would ask him to take it on notice. I also ask a supplementary question. Could the minister inform the Senate whether Mr Howard authorised his press office to inform the Australian newspaper that Mr Sinodinos had admonished Commissioner Keelty, or was it the Prime Minister’s press office backgrounding this information without prime ministerial knowledge? Can you at least tell us the truth in relation to that matter?

Senator HILL—I do not think Senator Faulkner listened to my answer. I said that the government and the Prime Minister have full confidence in the Commissioner of the Australian Federal Police. So that would seem to be somewhat inconsistent with the tenor of the latter part of the supplementary question asked by Senator Faulkner. In relation to communications between the Prime Minister and his staff—whether that is with his chief of staff or with staff that are associated with press functions—that is obviously a matter between the Prime Minister and his staff, and it is not appropriate for me to interfere in that relationship.

Foreign Affairs: Iraq

Senator SANDY MACDONALD (2.05 p.m.)—My question is to the Minister for Defence, Senator Hill. Minister, will you inform the Senate of progress being made in Iraq one year from the start of military operations? Will you also outline the importance of Australia’s role in the ongoing efforts to rebuild Iraq? Are you aware of any alternative policies?

Senator HILL—I thank Senator Sandy Macdonald for that important question. Significant progress has been made in the year since military operations commenced against Iraq. As we all know, Saddam Hussein was a dictator who used weapons of mass destruction against his own people and against his neighbours. He was a dictator who invaded his neighbours. The Iraqi people and their neighbours have now been freed from such threats. No longer need the Iraqi people fear the knock on the door in the middle of the night from Saddam’s secret police. It is true that it will take time—I suspect many years—to recover from the damage done by Saddam and his Batshit regime. The transition was always going to be difficult. Despite these difficulties, the Iraqi people are optimistic about their future. A poll conducted by Oxford Research International for the BBC and other media outlets found that the majority of Iraqis think things are better now than they were before the war. The poll found that more than two-thirds of Iraqis expect their lives to be better again a year from now. The removal of Saddam has restored hope in the people of Iraq.

No-one would disagree with their sentiment that the major priority they face is restoration of public security. That is why the Australian government has committed Australian Defence Force expertise to these essential areas. Not only are we helping to establish the Iraqi army and the Iraqi navy; we are also providing boots on the ground to support Australians working to rebuild other important institutions. In the last year the Australian Army security detachment has travelled over 37,000 kilometres on protection tasks, completed about 18,000 hours of sentry duty and destroyed close to 9,500 items of explosive ordnance. In addition to the international forces in Iraq, over 200,000 Iraqis are now serving on duty in Iraqi security forces and many more are in training. The coalition has had significant successes in capturing or killing wanted senior regime figures, with only a few high-priority fugitives still at large.

The increased security presence has resulted in a reduction in the number of attacks
on Iraqi oil infrastructure, and the removal of Saddam means that the revenue earned from Iraqi oil exports will now go to the Iraqi people. The country’s health system is functioning again but is now for all Iraqis, not just the privileged few. Iraqi children are back in school and have received millions of new textbooks. Across Iraq farmers and businesspeople are returning to work knowing that they have a better future. None of these achievements would have been possible without the intervention of the coalition forces.

I am asked about alternative policies. If Senator Macdonald is wondering about the Australian Labor Party, of course we do not know. They remain on the fence on this issue as they do on so many others. What I can tell you is that freedom and democracy do not come easily and the international community must be resolute at this time. This is not a time for weakness or indecision.

National Security: Terrorism

**Senator Faulkner** (2.09 p.m.)—My question is directed to Senator Ellison as Minister for Justice and Minister representing the Attorney-General. Can the minister confirm that the Guide to Official Conduct for APS Employees and Agency Heads specifies:

... an adviser needing to contact an APS employee in another portfolio should make contact through that portfolio’s Ministerial office and the relevant agency within their own portfolio should be involved in any discussions.

Did Mr Sinodinos contact Minister Ellison or Minister Ruddock before contacting Commissioner Keelty? Has either Minister Ellison or Minister Ruddock reprimanded Mr Sinodinos for breaching such clear guidelines, or has such a breach just become normal operating practice in a government renowned for ignoring codes of conduct and Public Service guidelines?

**Senator Ellison**—This is a bit rich coming from an opposition that pretends to have the answers with a homeland security department whereby you have a seamless line of communication in relation to security matters. The situation is that the Australian Federal Police Commissioner has regular contact with the Prime Minister’s office, and vice versa, on security matters, and no-one would expect otherwise. In fact the commissioner travelled overseas recently with the Minister for Foreign Affairs and did not have to phone me up every moment he wanted to speak to the Minister for Foreign Affairs. It would be entirely ridiculous to suggest anything else. What we are talking about is an environment where Australia is at threat and the Commissioner of the Australian Federal Police needs to have the ability to talk to the Minister for Foreign Affairs, to talk to the Prime Minister’s office and to talk to the Attorney-General without having to go through some cumbersome bureaucratic process of seeking my approval or going via my office. That is purely ridiculous.

We will not abide by anything which would hinder this country’s efforts in looking after its interests. Senator Faulkner knows that what he is talking about is absolute rubbish. We have seen regular contact whereby the Commissioner of the Australian Federal Police has spoken to other ministers such as the Minister for Foreign Affairs and the Attorney-General, to the Prime Minister’s office and to the Prime Minister without having to go through me, and vice versa. I would not expect it to be any other way, because to demand that we have this bureaucratic process whereby everything has to go via me or my office would not be in the interests of looking out for Australia’s security.

**Senator Faulkner**—Mr President, I ask a supplementary question. Does this mean that the Guide to Official Conduct for APS Employees and Agency Heads has now
been watered down by the Howard government to ‘cumbersome bureaucratic guidelines’? They are now cumbersome bureaucratic guidelines because they were not adhered to in relation to Mr Sinodinos’s contact with Commissioner Keelty. At least front up to the Senate, Minister Ellison, and indicate whether Mr Sinodinos actually contacted you or contacted Minister Ruddock before he contacted Commissioner Keelty. At least front up on that issue; do not hide on this occasion.

Senator Ian Campbell—Mr President, I raise a point of order. The Leader of the Opposition in the Senate should be directing his question through you. He is now directing it straight across the chamber and badgering a minister. Could you please direct him to abide by the standing orders?

The President—Senator Ian Campbell, from time to time I have to draw it to the attention of both ministers and members of the opposition to address their remarks through the chair. I thought in this particular case it would lengthen question time, but I take your point.

Senator Ellison—I have explained extremely well how the system works, and that is that you need to have a seamless line of communication. The opposition would run to a book to work out how to look after Australia’s interests in relation to security matters. It is important that the Australian Federal Police Commissioner be able to communicate directly with the Prime Minister’s office and vice versa. I have no problem with the chief of staff of the Prime Minister contacting the Commissioner of Police of the Australian Federal Police or vice versa. In this case I did not discuss the matter with him prior to that contact, and I have no trouble with that.

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Superannuation: Policy

Senator Brandis (2.14 p.m.)—My question is directed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Will the minister inform the Senate how the Howard government’s retirement incomes policies are providing greater choice and incentives for all Australians to plan and save for their retirement? Is the minister aware of any alternative policies?

Senator Coonan—I do thank Senator Brandis for his insightful question. The government is working hard to ensure Australia’s superannuation system provides choice and flexibility and incentives for all Australians to save for their retirement, and just last week I announced an extension to the government super co-contributions measure. Under this initiative, for workers earning up to $27,500 the Australian government will match their own personal super contributions up to $1,000 annually. The co-contribution tapers over $27,500 up to a threshold of $40,000, and the government has already committed $920 million to this measure for four years and will now widen the eligibility criteria to include people who earn less than $450 a month and who are not eligible for super contributions from their employer. This will mean that up to another million people will be eligible for the matched co-contribution scheme, and the government will commit over $1 billion in total to this measure.

It is a targeted way to assist Australians to save for their retirement and it delivers better outcomes for retirement savings than reducing the super contributions tax by two per cent. For example, a worker earning $20,000 with the government’s matched contribution of $1,000 over a 30-year period will increase retirement savings by 14.5 per cent, and for someone on $32,500 it will increase retirement savings by seven per cent. Under other
proposals, whether you earn $20,000 or $40,000 after 30 years, the reduced contribution tax will improve your retirement savings by less than one per cent.

I am asked about alternative policies. Last week the opposition leader, Mr Latham, made a speech outlining the Labor Party’s warmed-over superannuation ideas. Front and centre was a proposal to reduce the contributions tax from 15 to 13 per cent, costing over $1 billion, but Mr Latham gave no clue as to how it would be paid for. Of course, Labor had initially said it would pay for it by not proceeding with the reduction of super surcharge and by cutting out, excluding, members of defined benefit funds—people like teachers, nurses, military personnel and government workers—from choice of funds. These options are no longer available. We have no idea from Mr Latham’s statement how this is going to be paid for. But he also promised to abolish the super contributions tax altogether, costing about $5 billion, although from what magic pudding that is going to be paid for remains a mystery and, of course, he cannot stick to anything for about 24 hours, let alone 20 years. He said he would abolish it over a couple of decades.

But the most revealing part of Labor’s superannuation announcement was a strange notion linking pensions to the wrong index, an $8 billion superblooper that would see an 11 per cent increase in age pensions and a $2 billion gap to fill each year. Now, Senator Sherry has taken the fall for this. Senator Sherry has pleaded guilty to incompetence for the bungled pension plan. Mr Latham has pleaded that his policy was 99 per cent right—and it would be an interesting budget if we were to rely on somebody who is happy to settle for being 99 per cent right. Mr Latham has an unfortunate tendency to blame others for his own mistakes. The truth is, it appears that neither Senator Sherry nor Mr Latham knew the difference between the two pension indexation measures. Labor and Mr Latham and Senator Sherry are weak on policy; they just do not understand— (Time expired)

Senator BRANDIS—Mr President, I ask a supplementary question. Can the minister further inform the Senate of the alternative policies to the government’s superannuation plans?

Senator COONAN—In talking about the government’s superannuation policy and Senator Sherry’s bungled superannuation plans, what we in fact know is that while Senator Sherry has been talking about child savings accounts he has not been doing the detail; he has not been able to do the detail.

Senator Faulkner—Mr President, on a point of order, the question—

The PRESIDENT—I could not hear it for the noise, actually.

Senator Brown—Mr President, I rise on a point of order. The question itself seems contrary to your ruling that other policies should not be entertained unless the government is going to dismiss them. I ask you to look at the question and see if it is legitimate.

The PRESIDENT—Senator Brown, I will look at the supplementary. Senator Faulkner has already queried the supplementary question. I am afraid I could not hear it for the noise coming from this side of the chamber.

Senator COONAN—Mr President, what I was saying is that this government is committed to real and deliverable policies that will actually improve the retirement savings of all Australians, whereas Senator Sherry, after eight years of having his feet up on the desk, does not even know the difference as to the way in which pensions are indexed. He is sloppy on detail and weak on policy.
National Security: Terrorism

Senator ROBERT RAY (2.20 p.m.)—I direct my question to Senator Ellison, the Minister for Justice and Customs. Did AFP Commissioner Keelty issue his retraction on Tuesday, 16 March of his own volition or was he requested to do so by the minister or other members or representatives of the government? Will the minister now take this opportunity to deny media reports that the clarifying statement was drawn up by the government and that Commissioner Keelty was instructed to make absolutely no changes to the statement? Who invited the head of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, to involve himself in negotiations over the statement, and did Dr Shergold keep the minister for justice fully informed during the negotiations?

Senator ELLISON—From my discussions with the police commissioner, this statement was his own statement and he issued the statement of his own accord. I certainly discussed the matter with the police commissioner, which you would expect, but that statement was made by Commissioner Keelty. Commissioner Keelty, as I have said, is a very, very independent police officer, a man of high integrity and professionalism, and I have said that on a number of occasions. As to how Commissioner Keelty arrived at the statement that he made, you had best ask him.

Senator ROBERT RAY—Mr President, I ask a supplementary question. Do I take it that the minister is inviting me to—

Opposition senators interjecting—

The PRESIDENT—Senator Ray, I cannot hear you for interjections from your side of politics. I cannot believe that those senators would not show you the courtesy of allowing you to ask the supplementary question.

Senator ROBERT RAY—I am very tolerant, Mr President; everyone knows that. Do I take it from the last comment of the minister that he is inviting me to discuss this matter with Commissioner Keelty? When can I take up that opportunity—because he seems to have invited me to do so? Could you also address that part of the question that asked you who invited Dr Shergold into the negotiations? Did Dr Shergold keep you updated on his activities in regard to this? The final part of the supplementary question is: did Commissioner Keelty ever raise with you the question of a possible resignation and, if so, what was your response to it?

Senator ELLISON—I can definitely say that Commissioner Keelty never raised a possible resignation with me and that I did not discuss this matter with Dr Shergold. In relation to the statement that Commissioner Keelty has made, he made very clear the substance of the statement and that that, as far as he is concerned, is the end of the matter.

Education: Educational Textbook Subsidy Scheme

Senator STOTT DESPOJA (2.23 p.m.)—My question is addressed to the Minister representing the Prime Minister. Is the minister aware of comments made over the weekend by a spokesperson for the Prime Minister who stated that the Educational Textbook Subsidy Scheme would be considered by cabinet’s Expenditure Review Committee before the May budget? Is the minister aware that if the scheme is not extended students will face an effective eight per cent increase in the costs of their textbooks when this scheme finishes at the end of June? Isn’t it the case then that this makes a mockery of the government’s promise and claim that there will be no tax increases this year?
Senator HILL—I am not aware of comments attributed to a spokesman for the Prime Minister on this particular matter so I will seek further advice on that and report back.

Senator STOTT DESPOJA—I thank the minister for that undertaking and ask him to also find out, for the benefit of the Senate, when this issue will be discussed by cabinet or the ERC and when students, their families and booksellers around the nation will be given a final answer as to whether this scheme will be continued or not.

Senator HILL—I will seek advice on the plans in relation to the scheme but, as the honourable senator knows, this is a government that has been deeply committed to quality education and good outcomes for Australian students. We have made a very major investment in the youth of Australia in this regard so I suspect she can rest easy, but I will seek further advice.

National Security: Terrorism

Senator HOGG (2.25 p.m.)—My question is to Senator Hill representing the Minister for Foreign Affairs. Can the minister explain what the Minister for Foreign Affairs, Mr Downer, meant when he claimed on 16 March that AFP Commissioner Keelty was ‘expressing a view which reflects a lot of the propaganda we’ve been getting from al-Qaeda’? Does the minister consider it proper and reasonable for the Minister for Foreign Affairs to imply that Australia’s police commissioner is a mouthpiece for al-Qaeda propaganda? Did Mr Downer consult the Prime Minister or any other ministers before he made his highly inflammatory remarks about Commissioner Keelty?

Senator HILL—I heard Mr Downer explaining that matter on television—I think it was on Lateline—one night last week.

Senator Robert Ray—You would have loved it, wouldn’t you? You are that much closer to being foreign minister now.

Senator HILL—I am very happy with the job that I have, as a matter of interest. I would much prefer my job to all of those on the other side of this chamber.

Honourable senators interjecting—

The PRESIDENT—Order! Please allow the minister to reply.

Senator HILL—I have said that Mr Downer has explained his position in that regard and has made it clear that to interpret it in the way suggested by Senator Hogg is most unfair and invalid. There are propagandists, and al-Qaeda and other terrorist organisations use propaganda as one of their tools to try to undermine the confidence of democratic communities. That is a fact of life but it does not suggest that Mr Keelty was seeking to do that. That would be a silly suggestion.

Senator HOGG—I have a supplementary question. Given that a senior FBI representative, a senior UK police official and the US Deputy Secretary of Defense have expressed views similar to Mr Keelty, does the minister believe that these individuals are also, to quote Mr Downer, ‘mouthpieces of al-Qaeda’?

Senator HILL—Looking at that question, let me say that Mr Keelty has said that his comments were not taken in context, but the premise in the supplementary question seems to be to the contrary, which invalidates the supplementary question. The point is that our advice is not that the threat to Australia has increased as a result of our commitment to removing threats of weapons of mass destruction from Saddam Hussein and from Iraq. We had a medium risk assessment before the war in Iraq. We still have a medium risk assessment today. I hope that clarifies the matter.
Iraq

Senator NETTLE (2.29 p.m.)—My question is to the Minister for Defence, Senator Hill. Is the minister aware of evidence that General Peter Schoomaker, the Chief of Staff of the US Army, gave to the US Congress that the United States is planning for a steady troop level of 100,000 through yearlong rotations that extend into 2007? Can the minister confirm whether it is this government’s intention that Australian troops should stay as a part of the occupying forces in Iraq until 2007? Does the minister recognise that the continued presence of foreign troops is worsening the global security situation, fuelling violent resistance within Iraq and preventing the Iraqis from controlling their transition to democracy?

Senator HILL—I disagree with practically everything in that question. The honourable senator should be aware that in Iraq there will be a transition, from 1 July, to governance by the Iraqi people. That, in turn, will be a transition until there are full elections, which are planned for early next year. That is good to see because it means that the country will no longer be occupied—it will be the Iraqi people that are governing their own destiny. It may well be—and I would be surprised if this were not the case—that the Iraqi people will ask for ongoing support from the international community because, as I said in answer to the first question today, the transition to democracy and the transition to stability and security in Iraq is a very difficult challenge. This is a traumatised society that has suffered for almost three decades under Saddam Hussein.

The transition to democracy and freedom is not easy. But there are those within the international community who are committed to supporting the Iraqi people in achieving those goals: freedom and democracy. We are part of that international community, part of that coalition. We believe that that is part of a responsibility to the people of Iraq. We are proud of what this country has done and we are proud of what our Australian defence forces continue to do. I hope the United States will stay involved if that is the wish of the Iraqi people, and I hope that the Australian community will support us in wanting to support the Iraqi people’s work towards those objectives that are only fair and reasonable for them.

Senator NETTLE—Mr President, I ask a supplementary question. Can the minister explain why this government chooses to ignore the growing number of voices in Iraq that are calling for the occupation to end, including the thousands of Shiite and Sunni Iraqis who marched this weekend in Baghdad calling for an end to the occupation? On the question of the Australian troops, given that the Spanish currently have plans in train to withdraw their troops, that El Salvador and Honduras are following suit, that Poland is expressing concerns and that now South Korea is not going to commit the troops that they promised, can the minister outline at what point the 850 Australian troops will be withdrawn from Iraq?

Senator HILL—The worst thing we could do would be to withdraw because the going is tough. This is a worthwhile cause. The Iraqi people now have the opportunity of a better future, but they need the support of the international community to do so. To have the international community now walk away from them would be a disaster. They do not deserve that; they deserve something better. This government is part of an international community that is prepared to help them despite it being a difficult task. We, as I said, are proud of what this country has done to help the Iraqi people and it is our intention that we continue to help them at this very difficult time.
National Security: Terrorism

Senator KIRK (2.33 p.m.)—My question is to Senator Hill, representing the Prime Minister. Why did the Prime Minister, on Thursday, 18 March, when asked about his office’s intervention with AFP Commissioner Keelty, answer, ‘I’m not going to comment on that story’? Then, when asked by a journalist why not, why did the Prime Minister respond by saying, ‘Because I’m not commenting on it’? Why won’t the Prime Minister be accountable for the acts of Mr Sinodinos when he was operating at the Prime Minister’s direction? How does the Prime Minister justify his silence on this issue when at the same time we have a plethora of comments from Ministers Downer, Ruddock, Hill and Costello on the same matter?

Senator HILL—I come from a school that actually believes you are not obliged to comment in answer to every journalist’s question. It is quite legitimate occasionally to say, ‘I decide not to comment on that.’ If that is so, then it is equally legitimate, if asked why you are not commenting, to answer, ‘Because I’m not commenting.’ That was the Prime Minister’s choice on the day; that is part of a democracy, and he obviously exercised the choice in that way. If there were other ministers who decided to comment on that or other matters, that is their business as well.

Senator KIRK—Mr President, I ask a supplementary question. Is the minister aware of the Prime Minister’s statement last week in reference to Mr Abbott’s foray into the abortion issue where Mr Howard said: I know Tony well and I know how strongly he feels about this issue and he has a right and he’s in a position to speak about it. I mean, I notice somebody this morning, maybe it was from the women’s electoral lobby, saying that he should withdraw the statement. Well, that’s a pretty Stalinist response.

Mr President, using the same logic, wasn’t the Howard government’s overreaction in heavying the nation’s top law enforcement officer a completely Stalinist response?

Senator HILL—I would not read out those questions without reading them first. Then you would not be so embarrassed, and we would not be so embarrassed for you. If Senator Faulkner drafted that for you, I would take him aside afterwards and have a talk.

Forestry: Policy

Senator BARNETT (2.35 p.m.)—My question is directed to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald. Will the minister inform the Senate of the Howard government’s commitment to both forest conservation and the jobs of timber workers? I will emphasise the second part of this question because there is a sting in the tail: is the minister aware of any alternative policies?

Honourable senators interjecting—

The PRESIDENT—Order! I remind honourable senators on both sides of the chamber of standing order 72. I would ask you to look at that because it says that a person asking a question and a person answering a question should be heard in silence.

Senator IAN MACDONALD—Senator Barnett will well know from his understanding of, and support for, forest workers that the Australian forest and wood products industry has a $15 billion annual turnover and supports Australia’s fourth biggest manufacturing industry. It exports something like $2.1 billion annually and employs over 86,000 people directly and about the same number indirectly—all of this while Australia has some of the most sustainably managed forests in the world. Australia has a greater percentage of its forests in reserves than is recommended by the world peak conservation organisation, the IUCN. Australia
has ensured that 71 per cent of Australia’s old-growth forests in RFA regions are now in conservation reserves.

The industry is underpinned by the Howard government’s regional forest agreements. They were, of course, signed by the Prime Minister and all of the state premiers a little while ago. They are supported by the Regional Forest Agreements Act 2002, which, as all senators will recall, was the first piece of legislation passed by the Senate in the term of the third Howard government. The regional forest agreements provide for the states to manage in a sustainable way their native and plantation forests, which of course the states have responsibility for under the Constitution. Further, the RFAs provided for an investment in excess of $180 million by the Australian government to assist with value-adding opportunities, to create jobs and to secure the future of country towns.

Senator Barnett asked me if I am aware of alternative policies. Heretofore the major parties have been on the same bus so far as forestry is concerned. Under our leadership, forest policy has enjoyed bipartisan support, with the Labor Party actually supporting in this chamber the Regional Forest Agreements Act earlier in the term. But we now have a new driver at the wheel of the Labor Party bus, who last week meandered around the forests, with a freshly painted L-plate hung around his neck, trying to win back the votes of the huge number of Labor supporters who have left the Labor Party and transferred their votes to the Greens. I am pleased to say that at last somebody from the Labor Party has been down to look at the Tasmanian forests. Of course they are following on the lead from a raft of Howard government ministers responsible for forests and the environment, like Dr Kemp, Senator Hill, Mr Tuckey and me, to name just a few.

However, after all the media hype and all the self-promotion, the trip to Tasmania by Mr Latham has ended with an endorsement by Mr Latham of the Howard government’s regional forest agreements policy and an endorsement of its forest industry policy. Fortunately the CFMEU, the Tasmanian Labor Premier and the Labor federal members did what I asked them to a few weeks ago: convince Mr Latham that forestry is sustainable, is a well-managed industry and means many jobs for Tasmanians and a lot to the Tasmanian economy. Mr Latham is learning, but he will need to keep the L-plate around his neck for a lot longer if he wants to be taken seriously. There are other policies floating around. I understand that the Greens have a policy of banning all Australian logging, and in this way they support the import of wooden forest products— Time expired

Senator BARNETT—Mr President, I have a supplementary question. Is the minister aware of any further alternative policies and can he advise the Senate accordingly?

Senator Brown—Mr President, I rise on a point of order. Besides the minister getting it wrong on the Greens—he should ask us—that question is out of order according to your own injunction to the Senate of just last month.

The PRESIDENT—Senator Barnett, I do believe that question may have been out of order.

Senator Ian Macdonald interjecting—

The PRESIDENT—You may recall that Senator Brown raised with me the issue of asking about alternative policies of other parties. I did send a note to all senators explaining that, whilst it has been the practice of former presidents to allow questions to be asked about alternative policies in relation to the initial question, you cannot just ask a question off the cuff about policies of another party without referring to—
Senator Hill—But this was a supplementary question; that is all right.

The PRESIDENT—I believe in this context it was out of order.

Senator Ian Macdonald—Mr President, I raise a further point of order. I was asked in the original question about government policies, and I was asked whether I was aware of alternative policies. In answer to that I was indicating that there were alternative policies, not necessarily of different political parties. There were other policies around. Everybody knows the Greens have a policy of stopping all logging. What I am absolutely amazed about with your ruling—

The PRESIDENT—Order! What is your point of order, Minister?

Senator Ian Macdonald—Your ruling is contrary to the ruling you previously made. This is a subsequent question about other policies following on from and as an alternative to the government’s policy.

The PRESIDENT—I have ruled the question out of order.

Senator Ian Campbell—On the point of order, Mr President: you said it may be out of order. What I would ask is that you report back to the Senate as to whether or not it is out of order. Your words were, ‘This may be out of order.’ I think you owe the Senate the courtesy of reporting back as to whether or not it is. It is clearly an issue.

The PRESIDENT—If what I have done contravenes the note that I sent to senators, I will report back to the Senate.

National Security: Terrorism

Senator LUDWIG (2.44 p.m.)—My question is to Senator Ellison, the Minister for Justice and Customs and the Minister representing the Attorney-General. Can the minister confirm that it is vital that all Australian security agencies cooperate in our fight against terrorism? How does this aim sit with the Prime Minister’s gratuitous dismissal of the views of AFP Commissioner Keelty when Mr Howard asserted that he would be much more reliant on the views and assessments of ASIO’s Mr Dennis Richardson? Shouldn’t wedge politics be directed only to the Labor Party and not be used as a tool of government to divide security agencies for political gain? Shouldn’t the government put the national interest ahead of its own political interest and not embroil the Director-General of ASIO and the Chief of the Defence Force in a political damage control exercise?

Senator ELLISON—The Prime Minister made it very clear that ASIO is the organisation which carries out threat assessments. Via a number of comments this week, the Prime Minister has demonstrated the various roles that our agencies play. The Australian Federal Police have a counter-terrorism role, an investigative role. ASIO has a threat assessment role and is the body that is charged with that. The Prime Minister was simply outlining the role of the agencies and how they work together—and they work together very well. In relation to Senator Ludwig’s question, I can confirm that these agencies should, and do, work together. I think it was Mr Richardson who said at Senate estimates recently that we had world’s best practice, if I recall correctly, in relation to border protection and the relationship that had with ASIO. That was just one example that he cited. But, in relation to the Prime Minister’s comment, he was simply outlining the role of the different agencies and it was a very straightforward comment.

Senator LUDWIG—Mr President, I ask a supplementary question. Will the minister take this opportunity to deny press reports suggesting that General Cosgrove’s comments regarding Commissioner Keelty have caused tensions between the uniformed ser-
vices and may impair future cooperation in overseas operations?

Senator ELLISON—That question is—

Senator Vanstone—It’s a joke.

Senator ELLISON—Senator Vanstone is right. The relationship between the Australian defence forces and the Australian Federal Police has never been better. That has been significantly demonstrated in the Solomon Islands with the RAMSI mission and operation, which has been an outstanding success. I can also remind senators of the great cooperation we had in East Timor between the Australian defence forces and the Australian Federal Police. There is a very close working relationship between the Australian defence forces and the Australian Federal Police and a very close personal relationship between the CDF, General Cosgrove, and Police Commissioner Keelty.

Telstra

Senator CHERRY (2.47 p.m.)—My question is to the Minister for Finance and Administration and concerns his 11 March statement, with Minister Williams, where he said:

Selling Telstra is the obvious final step in the journey towards a truly competitive telecommunications market in Australia.

Does the minister stand by this piece of hyperbole following Graeme Samuel’s finding that:

The ACCC believes that Telstra has engaged or is engaging in anti-competitive conduct in relation to Telstra’s wholesale pricing of high speed internet services ...

Was the minister aware that the ACCC reported last year that:

... competition has not developed as extensively as ... expected ... and various telecommunications markets are not ... effectively competitive.

When will the government respond on taking the really big step that the ACCC regards as essential to deliver competition: the structural changes to Telstra recommended in the emerging market structures report?

Senator MINCHIN—Yes, I do stand by my statements. It has been a clear and long-term policy of this government that the government should not be involved in the ownership of Telstra. It is a policy for which we have a clear mandate. We have taken it to the people on several occasions. Indeed, if we had been successful in selling all our shares in Telstra the Australian people now would be considerably better off in financial terms.

I think the senator’s question answers itself. However, the statements by Mr Samuel on behalf of the ACCC—merits or otherwise of which I am not going to enter into—do indicate very clearly that this is a heavily regulated industry. It does not require the government to own half of this company for the federal government, through instrumentalities like the ACCC, to properly and fairly regulate this industry in the interests of competition and consumers. That is a complete and utterly fallacy perpetrated by the opposition parties to suggest that somehow a certain level of ownership is required in order to ensure appropriate regulation. It is available to the parliament at any stage to amend the regulatory arrangements. The Constitution provides the parliament with the full gamut of powers in relation to the regulation of the telecommunications industry. Mr Samuel is exercising those powers.

It is a matter for Telstra and the ACCC to determine the appropriateness or otherwise of that matter. It is for Telstra to challenge that, if they want to, according to law. As I have said, I think it does emphasise that this is a properly heavily regulated industry. It is probably the most heavily regulated industry in the whole country. Certainly, 50.1 per cent ownership by the government is clearly not needed for that industry to be regulated in
this way. We have repeated on many occasions our view that it is in fact quite improper for the government to be both the majority owner of this very large corporate entity and the regulator. It is an inherent conflict of interest which should be ended by this parliament agreeing that the remaining shares should be sold.

Senator CHERRY—Mr President, I ask a supplementary question. On the matter of regulation, when will the government be responding to the ACCC’s concern that it does not have sufficient powers to regulate Telstra, in particular the recommendations to the Senate regarding misuse of market power provisions in the Trade Practices Act and divestiture powers? These are clearly essential if Telstra is to be regulated. If regulation rather than ownership is what matters and regulation is not working, then surely all we have left is ownership.

Senator MINCHIN—Those are really questions for the minister representing the Minister for Communications, Information Technology and the Arts. They are not my responsibility as Minister for Finance and Administration—and I will refer them—but I would assert that we do have a highly competitive field in telecommunications, as evidenced by the growth and success of companies such as Optus. I do not think how competitive this industry has become is as much in the minds of Australians as it probably should be. There are a number of competitors competing with Telstra for this market in a highly competitive field and in an industry that, as I say, is probably more heavily regulated than any other industry in Australia.

National Security: Transport

Senator O’BRIEN (2.52 p.m.)—My question is to Senator Hill, representing the Prime Minister. Is the minister aware of comments last week from a senior Qantas security manager, Mr Karl Sullivan, regarding transport security where he said:

... the intelligence we do get is often not timely, it’s usually never relevant and typically the answer we get when we ask a question is that it’s not available.

How does the government respond to these comments regarding the adequacy and coordination of security information provided by the various Australian agencies to major carriers such as Qantas? What action has the government taken in response to these security and intelligence concerns expressed by Qantas?

Senator HILL—I heard a question of that nature being asked of Minister Anderson, who has ministerial responsibilities in this regard. Like a number of other questions today, it already seems to have been asked elsewhere. Mr Anderson’s response was basically that these comments were inconsistent with his knowledge and that just recently he had been reassured from the highest levels of Qantas that communications were good. In a few instances that I have been indirectly involved on some of these occasions, my experience has been that communication has been very good as well. It is in the interests of national security in this country that our agencies work closely with Qantas and with other airlines and different forms of transport. It is something that we as a government encourage. As I said, in my experience it has worked well. I heard the statement. I heard the response of Mr Anderson. I believe that Mr Anderson has effectively concluded the matter.

Senator O’BRIEN—Mr President, I ask a supplementary question. I have not heard any answer other than the answer that I just received to my question, but perhaps the minister can obtain further information and actually answer the question. Perhaps he could take it on notice rather than rely upon
what he might have heard in the other place. In the context of the suggestion that the communication channels are working effectively, can the minister inform the Senate of a recent incident in Japan where Qantas could not obtain information from Australian agencies? Did British and American agencies provide the requisite security information to Australia’s national airline in that instance? Given the close cooperation between Australian agencies and their US and UK counterparts, why couldn’t the Australian agencies assist Qantas in that instance?

Senator HILL—I will see what information I can get on the supplementary. It may well have been that these other agencies had the information at hand and, as was said, it is the practice to encourage the sharing of information that improves the international security environment. It is obvious that would be the case. In relation to the particular instance, if there is anything helpful that I can provide to the Senate, I will do so.

Social Welfare: Fraud

Senator FERRIS (2.56 p.m.)—My question is to the Minister of Family and Community Services, Senator Patterson. Will the minister update the Senate on what the Howard government has done to crack down on welfare fraud to ensure that taxpayers’ funds are not being wasted? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Ferris for the question. It is a very important question because it will give me the opportunity to highlight just what we have been able to achieve in ensuring that Australians receiving assistance from the taxpayer get what they deserve, that people comply with the laws that are associated with welfare and that we ensure that we also prevent fraud. We want to ensure that the taxpayers’ money is spent on improved services rather than wasting it on welfare fraud and giving it to people who are not entitled to that welfare as a result of failing to give us correct information.

The measures that we have introduced include things such as increasing the number of reviews, widening the data-matching selection criteria and a range of other measures to ensure that the taxpayers’ money is spent appropriately. The savings represent the amount of taxpayers’ money saved on welfare recipients who had their payments cancelled or reduced because of compliance and review activities. The result is a net saving of $2.3 billion a year—$2.3 billion a year saved by ensuring that people comply with the social security legislation and/or reducing the number of people who are defrauding or cheating on the welfare system. That works out at $44 million a week being saved to ensure that people who are entitled to benefits get them but those who are not entitled to them do not get them.

If you add to that the money we have saved in paying back the $96 billion worth of debt that Labor left us, and we have now paid back $60 billion of that, what we are now saving on interest—because, just like families, governments have to pay interest on debt—is $96 million a week. So now we have $140 million a week that we have been able to obtain through reducing fraud and reducing lack of compliance and also by not having to pay interest through reducing our indebtedness. We have $140 million a week more that we can spend on assisting families, including increased family assistance payments, doubling child-care benefits, spending on health and education—the sort of announcement that Dr Nelson made the other day of $2 billion to assist children with special learning needs. That is the sort of thing that we can spend when we actually have not got a debt, when we do not have people receiving social security that they should not be getting. The Howard government will ensure that we have a secure welfare safety

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net that supports those most in need and ensures that people only receive what they are entitled to.

Senator Ferris asked me whether there are any alternative policies. I listened with bated breath the week before last when Mr Swan was at the Press Club, but there was nothing. I had said the day before that he was a policy-free zone and I was correct. There was nothing from Mr Swan, nothing about what the Labor Party was going to do. But we know from the group that purport to tell the truth about Labor’s policy—Laurie Ferguson, Tanya Plibersek and Bob McMullan—that what they are going to do is increase tax. We heard a bit of policy from them—tax increases—but nothing from Mr Swan. Mr Latham says that he will not raise taxes, he will not raise capital gains tax, and he will lower the personal tax rate. He has promised budget surpluses. He will increase spending but lower taxes. There will be no logging of forests but no loss of forest jobs. But the devil will always be in the detail. When it gets to the detail we saw that Senator Sherry got the blame. Mr Latham made the claim about the indexation of pensions. If you extended that to all pensions then it would have been a $17 billion hole. Senator Sherry, do not wear the blame. (Time expired)

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

National Security: Terrorism

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.01 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) and the Minister for Justice and Customs (Senator Ellison) to questions without notice asked by senators today relating to treatment of comments of the Australian Federal Police Commissioner, Mr Keelty, about military involvement in Iraq.

Last week was another inglorious chapter in the history of the Howard government and its eternal bid to keep a lid on the truth. On the Sunday program on 14 March, Federal Police Commissioner Mick Keelty linked the atrocity inflicted on the Spanish people to the position that Spain and other allies took on issues such as Iraq. It was a perfectly reasonable and widely supported proposition but not consistent with Howard government orthodoxy. Two hundred and two people were killed and 1,800 injured. It was a horrific attack, as all senators know, and just prior to the Spanish election. The then government of Spain were seen to be trying to mislead the voters about the perpetrators, and they were tossed out at the ballot box a few days later. They tried to keep a lid on the truth.

The spectre of such an electoral backlash obviously panicked Prime Minister Howard. How else could we explain the Prime Minister’s Chief of Staff contacting Commissioner Keelty straight after the interview to tell him that he had a ‘media problem’? Shortly thereafter we had a string of ministers coming out criticising the commissioner’s point of view as being uninformed. The ministers and the government created the media problem. Mr Downer, ever the person to go a bridge too far in this government, actually implied that the commissioner was retailing al-Qaeda propaganda. Mr Howard pitted selected words from ASIO Chief Dennis Richardson against Commissioner Keelty to foolishly create divisions between agencies. By Tuesday, Commissioner Keelty was forced to issue a statement putting his words into so-called ‘context’. This statement was reportedly massaged by the Department of Prime Minister and Cabinet, possibly also by the office of the Attorney-General, Mr Ruddock, although Mr Ruddock denies any direct ministerial involvement in the exercise.
Despite these heavyweights being involved in this statement, it has been noted by most commentators that Commissioner Keelty did not retract from his original position. After the statement was issued we had Howard government ministers singing the commissioner’s praises to the rafters. I think they probably caught wind of the commissioner’s position that if the government lacked confidence in him he might resign. Then you would have had a media problem of gigantic proportions.

Look at the effort in question time today. The government ministers could not tell us whether Mr Sinodinos’s phone call was authorised. They could not explain why contact with Commissioner Keelty was not undertaken through the proper channels. We now have a situation where the watered-down guide to official conduct for APS employees and agency heads is defined as cumbersome, bureaucratic guidelines. They could not tell us in question time about Dr Sher-gold’s role in this fiasco. They could not tell us whether Commissioner Keelty drafted his own retraction statement. They could not tell us whether Commissioner Keelty was told to make absolutely no change to his statement. They could not tell us whether the Prime Minister’s office not been in touch with Commissioner Keelty’s office then we would have been negligent, then we would have been able to be criticised for not being in touch and not taking the issues of our homeland security seriously.

Senator Faulkner says that the ministers today could not explain the issue. Of course the ministers have given explanations. They have been doing so for the past week. Every person on this side of the chamber has nothing but absolute respect for Commissioner Keelty. I probably know Commissioner Keelty better than most in this place, although perhaps not as well as some—perhaps some of the ministers. I have personally spoken at some length with Commissioner Keelty. I have never had anything but absolute cooperation from Commissioner Keelty. What he says makes absolute and cogent sense. You can understand what he means. As the Prime Minister has said—and I do not know where the continual carping
on the other side about denigrating the commissioner comes from—he has nothing but absolute respect for Commissioner Keelty.

Senator Faulkner, the Leader of the Opposition in this place, says that there are continual attacks on Commissioner Keelty. There are not continual attacks on the commissioner from this side. We have stated our position again and again—from the Prime Minister to the Deputy Prime Minister, to senior ministers, to the cabinet, to ministers and even to backbenchers like me—that we have nothing but respect and admiration for the job that Commissioner Keelty has done. That was never more exemplified than when we had the bombings in Bali where, tragically, 89 mostly young Australians and others lost their lives. We are totally satisfied with this commissioner. We have one of the greatest commissioners that this country has ever seen.

The Prime Minister said that there were discussions last week between himself, the chief of staff, the secretary of the department and the commissioner. He acknowledges that. The beat-up came from the ABC. The ABC is clearly and unambiguously opposed to war in Iraq. Of course we had to go in there and sort out one of the worst killers this world has seen. He was not one of the worst in terms of numbers—Stalin and Hitler come before him—but he was unambiguously an evil man. If we had not done that what would have happened? Control of the world’s oil would have been diminished but, most of all, the killings would have gone on. Countries in the Middle East and other nations, particularly North Korea, would have taken that as an imprimatur of this government to continue their evil ways.

Are those on the other side saying that Iraq is worse off because the coalition went in there? Is that what they are saying? Are they now making excuses for Saddam Hussein? Are they saying that they are going to bring back Saddam Hussein? If a government is formed by the people on the other side, are they going to encourage Saddam Hussein to go back as president or, if they cannot get him to go back, are they going to encourage his type of dictatorship back in Iraq? If that is what they are saying it is so ridiculous that I can barely find the words to describe it. Are they saying that we were wrong to go into Iraq? It is not quite clear. There are some on the other side who appear to be saying that. Is it Mr Latham’s policy that what we did and what we are doing in Iraq is wrong? Is Mr Latham saying that he is going to pull our troops out of Iraq? Is he going to pull our troops out of Iraq if he forms government? God help Australia if he does. (Time expired)

Senator ROBERT RAY (Victoria) (3.11 p.m.)—I just wanted to start my contribution today by quoting from an interview with the Prime Minister on the radio last Thursday. The interviewer says:

Prime Minister, did your office urge Federal Police Commissioner Mick Keelty to issue a clarification over his remarks linking the Madrid bombings to Spain’s involvement in Iraq?

The Prime Minister replied:

I’m not going to comment on that story.

The interviewer asked:

Why not?

The Prime Minister replied:

Because I am not commenting on it.

The interviewer asked:

You can’t say whether Mr Keelty’s statement on Tuesday was made after a request from your office?

The Prime Minister replied:

I don’t have any comment on those matters.

We have a very silent Prime Minister, haven’t we? I say this to Mr Howard: you can run but you cannot hide. I never, ever again
want to hear this Prime Minister infer that one of his opponents lacks ticker, because if anyone lacked ticker it was the Prime Minister last Thursday when, having sent over his lackey to slap around the police commissioner, he was not willing to comment publicly on it because he was so embarrassed by, so ashamed of, such a seedy and sleazy action. Where do you get off not having the courtesy to ring the commissioner—

Senator Hill—I rise on a point of order, Deputy President. ‘Sleazy action’ is inappropriate when speaking of another parliamentarian, in terms of the standing orders.

The DEPUTY PRESIDENT—I hear what you say, Senator Hill, but I do not believe it is unparliamentary in the context in which Senator Ray is putting it. He is referring to the actions; he is not referring to the individual as such. Senator Ray, I caution you to be careful in the way you phrase your language on that matter.

Senator ROBERT RAY—If he had difficulties with the political context in which Mr Keelty was making statements, the Prime Minister had a responsibility to contact him himself. Instead, he went for the more humiliating route to Commissioner Keelty. He sent a staffer to ring him up straight after the program, not later in the afternoon. Before the make-up had been taken off he sent his staffer to the phone to slap around the police commissioner. We pointed out before that, in terms of his own government’s guidelines referring to the activities of public servants and staffers, if you want to go into another portfolio you ring the minister first. It certainly would have been better handled had Mr Sinodinos rung Minister Ellison and discussed the matter with him because it may have then evolved that Minister Ellison would have done the necessary cautionary work and not left it up to a staffer and the humiliation that was involved in that.

We heard from Senator Hill today that we cannot hear about any of these discussions because they are confidential. If they are so confidential, why did the government leak them to the Australian? There is no denial of that here today—not one denial. Just to further humiliate Commissioner Keelty you leak it to your favourite newspaper so he is slapped around in public. That is a disgraceful activity by government. Get up here and deny that the government leaked that particular matter. Get up and put your own reputations on the line and deny that the government leaked it.

You send the ministers out to undermine Commissioner Keelty. Mr Downer gets on the airwaves and does an interview in front of a whole range of journalists and basically implies that poor old Commissioner Keelty inadvertently or in some other way was mouthing off al-Qaeda propaganda. Later in the day, when he realises the inadvertent effect of that particular statement, what does he do? He blames the ABC—the old Liberal tactic: ‘It’s the Australian Broadcasting Corporation’s fault. They misinterpreted what I said.’ The words were quite plain. He either said them deliberately in an effort to smear Commissioner Keelty or he was incompetent in his use of words—a great sin for a foreign minister, who always has to choose his words carefully.

Then we come to the prepared statement by Commissioner Keelty. We cannot find out whether it was the government’s initiative or Mr Keelty’s initiative. We see it reported in the newspapers that the government prepared this statement. If they did, confirm it; if they did not, deny the newspaper report. What was the role and why was Dr Shergold pulled into this? I think he would have done it very reluctantly. Why bring in the Secretary of the Department of the Prime Minister and Cabinet to negotiate the statement? For heaven’s
sake, why do that? Why complicate it in this way?

Then we have the CDF’s intervention, standing next to Senator Hill the other day. Again, I do not think it was an intentional thing to undermine the police commissioner, but an absolutely gratuitous contribution—unnecessary and unhelpful for the long-term relationships between the various uniformed services. This is not about intelligence or strategic appraisals; this is about a political spin. Mr Keelty’s problem was that he inadvertently turned over the government’s spin—their constructed and fabricated view of the relationship between international terrorism and intervention in Iraq. Of course we are always a target. We were a target before Iraq and after Iraq. All we have done is move up the priority list. (Time expired)

Senator JOHNSTON (Western Australia) (3.16 p.m.)—The main issue confronting Australians today in national security is that one side of politics has a thoroughly thought-out, detailed response to a most complex issue. But Her Majesty’s opposition, particularly in this place, unless it is in one syllable and in black and white, are completely and utterly lost.

National security is not as simple as being on one side of the ledger or the other. That is the fundamental point that the Labor Party have never been able to come to terms with. This question is not about whether you support the United States. Of course, that is where the Labor Party get all of their gusto in this debate. Their revulsion for the US-Australian relationship as it now stands, which is stronger than ever, is driving them to want to say, ‘The Spanish bombing was all about Spain’s support of the United States in Iraq.’ How infantile and how simplistic. In the light of the foul-up in superannuation, where they actually had to do some work and got it wrong, how typical of this opposition. When push comes to shove, when the heat starts to come on, when you cannot just sit over there mouthing off and when you have to bring something tangible to this place—you actually have to produce the goods so the public can see what you are about—you get it wrong to the tune of $8 billion. The only time you have ever had to do something in the last six months and you get it wrong to the tune of $8 billion.

Terrorism is not as simple as being on one side of the ledger or the other. Tell it to the Indonesians—which side do you think they were on? What about the Saudi Arabians, the Moroccans, the Turks, the Filipinos and, of course, latterly, the Spanish? These countries were all part of a wider problem. The wider problem is that these terrorists are attacking the West. They are attacking a standard of living. They are attacking issues that are important to freedom-loving people. It is not about whether you support the United States in Iraq. Australia was on the hit list long, long before 9/11. We were on the hit list because we went in and saved the men, women and children of East Timor. That is what we did wrong. What is that about? That is about our standing up for what is right. It is as simple as that. It is not about whether you support America or not. The Labor Party need to have it in simple terms.

What about the allegations that have been put forward in this place today? There is no substance whatsoever in terms of fact, so they come in here and say: ‘Why did you do this? Why did you do that? Why did you send Dr Shergold in?’ Who says Dr Shergold went in? Where is the fact? It is typical of Senator Faulkner to come in here and make these grandiose allegations. There is not one shred of fact. I just hope that when Senator Ludwig gets the microphone on this matter, if he does, he actually puts some flesh on the bones of these allegations, because I will be sitting here waiting with bated breath, know-
ing full well that it will be just another bucket of no substance being tipped over our way.

The Australian people can be assured that we have one of the best police commissioners in the history of the Australian Federal Police. The work that Mick Keelty has done with respect to Bali has been simply outstandingly professional and the envy of many people around the world. Indeed, we had a team ready to go to Spain following the unfortunate bombing there. The outstanding result that Keelty has achieved in the Solomon Islands has been a great credit to the Australian Federal Police and to his professional skill and ability generally.

I come back to the point. Australia was a target for terrorists long before we joined the war against terror and the war in Iraq. This is an issue that the opposition simply cannot come to terms with. Their revulsion for the United States and the President through their current leader comes to the surface every time they want to talk about what is at the root of terrorist motivations and terrorist intent. It is simplistic and it is infantile. (Time expired)

Senator LUDWIG (Queensland) (3.21 p.m.)—Today we have had silence from the government on what has actually occurred in this matter. There has been nothing from that side to explain what has occurred.

Senator Johnston—What’s occurred?

Senator LUDWIG—For a start, the Federal Police Commissioner made a statement to Jana Wendt on the Sunday program. Then suddenly there was a plethora of activity from the government about the statement. We had the Prime Minister, at least through Mr Downer and the Attorney-General, attacking the Australian Federal Police Commissioner on his comments on the Sunday program. When the Prime Minister was asked about the issue he said, ‘No comment.’ He did not want to explain what went on. Then, two minutes later, the Australian Federal Police Commissioner retracted the statement, or did he? Perhaps he simply issued a clarifying statement—which might be a better way of putting it, I suggest, rather than the way it was put. Then, three minutes later, we had the government praising the Australian Federal Police Commissioner for his work. If you do not think that there is not something there to be asked about, then you should not be in government.

For a start, the Prime Minister must issue a full and detailed explanation of all contact between his office and the office of the Australian Federal Police Commissioner since the Madrid bombing. Senator Hill said today that there are always discussions going on; that is, in fact, the cover story. There might be discussions always going on but let us ask the particular question: did the office of the Prime Minister contact the Australian Federal Police Commissioner and ask him to retract or to change his statement? Why do you not come clean on that issue? Why do you not then indicate to us what did occur? When you look at the next issue, the Prime Minister must confirm or explicitly deny that his office requested that Commissioner Keelty issue a clarification of his previous comments. We did not hear from Senator Hill any clarification of that issue, other than about the cover story. It is a neat cover story but it does not take us anywhere.

What have we heard from Senator Ellison? Unfortunately, we heard nothing from Senator Ellison. Senator Ellison is obviously not in the loop. Although Senator Ellison is the minister responsible for justice, the minister responsible for the Australian Federal Police and the minister responsible for the commissioner, whose position is a statutory one, he is not even in the loop about what is going on. I am not surprised, but I would have expected a little more from him—at
least that he would have been in the loop and known what has been going on.

However, we find that there remain a significant number of questions and this government does not want to give the Australian people the answers. It will not tell us whether there has been a role by Dr Shergold in this event and whether the statement by the Australian Federal Police Commissioner was his own statement, issued by him and put forward by him, or whether it was brought about by some other means. Was it suggested to the police commissioner that he should retract, change or alter his statement? Why else would the police commissioner say that he had considered resigning during this political debacle by the government, other than because he felt threatened or intimidated by the government over this issue? That is not a position in which the government should place the Australian Federal Police Commissioner.

The truth of the matter is that the Australian Federal Police Commissioner is central to issues of the war on terrorism. A considerable amount of the time, energy and resources of the Australian Federal Police are spent dealing with, broadly, issues of national security. When you then look at the issues that have evolved over the last week in this matter, it is high time that the Prime Minister issued a statement and informed the Australian public about what has taken place. It is not an issue on which this government should hide behind a cover story. They should make it plain to the Australian public what has occurred. It cannot be left unstated.

We still have government ministers on the one hand criticising the Australian Federal Police Commissioner and indicating—(Time expired)

Question agreed to.

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**Education: Educational Textbook Subsidy Scheme**

**Senator STOTT DESPOJA** (South Australia) (3.26 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 Stott Despoja today relating to the closure of the textbook subsidy scheme.

As honourable senators would be aware, I asked the minister about the proposed continuation or indeed the possible abolition of the Educational Textbook Subsidy Scheme. The subsidy scheme has been operating for four financial years now. It was initially introduced to alleviate the impact of the GST on books. For the record, because I caught a few of the interjections coming from some senators today, I have never supported a tax on books, I have never voted for a tax on books and I never will. But I do want to see some form of alleviation of the impact of the 15 per cent increase in the taxation of books, particularly for students, their families and, of course, aspiring students.

The scheme is due to cease at the end of this financial year and there has been a lack of debate, certainly at government level, and a lack of information distributed to the community warning them about the closure of this scheme. Booksellers have received no formal indication from the government that the scheme will definitely be closing. In fact, many booksellers and publishers and, of course, others in the printing industry have had to adjust their software and obviously computers and other administrative systems accordingly. They have received no confirmation from the government that this scheme is to close.

I have been following this issue for many years but particularly since February last year. I first started asking questions in estimates hearings when I noticed that there was...
no forward planning in the budget for this particular scheme to continue. It is not an expensive scheme, certainly not comparatively in terms of the education budget. Each year around $25 million has been budgeted for the scheme and each year the scheme has come in under that amount. Spending on the scheme in the last financial year was around $23 million, around $21.1 million in the one before that and around $18 million in the one before that—with the additional leftover funds being put into other books for libraries around the nation.

The point is that students are already facing a hike in the costs they are paying for education, particularly under this government, and particularly at higher education and TAFE level. If this scheme is abolished, as it is due to be by the end of this financial year, students will effectively have an eight per cent increase in the cost of their textbooks. Even though some of us have been passionately running a campaign on this issue, the Prime Minister, when asked about the issue by a caller on Adelaide radio ABC 891 last week, in my home state—Marilyn, I believe her name was—said that he was caught off guard. Obviously, I paraphrase. He indicated that he did not know what the caller was talking about.

I and others have raised this issue not only at estimates and in other fora but when I met with the education minister the week before last. I asked if this issue had been raised with the Prime Minister. While I acknowledge that this issue has not been raised recently, I have been told that it has been raised not only with the Prime Minister but in the context of the cabinet. That is why I asked the Minister representing the Prime Minister today to tell us when this scheme was going to be decided upon, whether it was going to run out and whether the minister was aware that an eight per cent increase in the cost of textbooks is a big issue and is going to be a big issue for students and their families.

While Senator Hill’s comments filled me with a little optimism—he reassured me that I would not be disappointed by the government’s response—with all due respect, Mr Deputy President, through you to Senator Hill, I am not sure if he was saying that because he was not exactly sure of the answer or because he just wanted to make my day. I am really happy to have my day made in a way that sees the eight per cent alleviation of the GST increase on textbooks secured, but I am not confident that that is the view of the broader cabinet.

I will continue to lobby. We have thousands of signatures on e-petitions and hard copy petitions. I have launched a sticker to ‘SOS’—save our subsidy. Book sellers and publishers around the nation will lobby this government, because a government cannot promise not to increase taxes this year and then allow taxes on educational books to go up by a whopping eight per cent, effectively. So the government is on notice—make a decision soon, and hope your ERC committee finds the funds, because a lot of Australians and their families will be voting with their feet on this one. They are not going to be happy. It is bad enough that we have a tax on books, but an eight per cent increase in the cost of educational textbooks after June will result in a backlash against this government. So I urge members of the parliament to talk to the government, and certainly backbenchers to lobby the cabinet, when the ERC decision takes place because this is one of those issues that, in an election year, I do not believe this government can afford to entertain. 

(Time expired)

Question agreed to.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:
Telstra: Privatisation
To the Honourable the President and Members of the Senate in Parliament assembled.
The undersigned urge the Senate to continue to oppose the full privatisation of Telstra as the sale is contrary to the public interest on the grounds that:
- services, particularly in regional areas, are not of a sufficient standard;
- competition in the market is not adequate given Telstra’s market dominance;
- ‘future proofing’ in terms of roll out of new technology is not guaranteed given the failing level of investment in the network and declining staff numbers;
- regulation of telecommunications is not sufficiently robust to protect consumers; and
- the public sector would be worse off if a major public asset and its dividend, stream was lost.

by Senator Bartlett (from three citizens).

Constitutional Reform: Senate Powers
From the citizens of Australia to the President of the Senate of the Parliament of Australia.
We the undersigned believe that the Prime Minister’s call for Senate Reform is an attempt to dilute the powers of the Senate and to enable the Executive to have absolute control over parliament.
We urge all Senators to ensure the powers and responsibilities, of the Senate are protected in the interests of ensuring good governance on behalf of the Australian people and to oppose any moves by the current, or future, Governments to weaken the ability of the Senate to be a check and balance on the Government of the day.

by Senator Bartlett (from seven citizens).

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

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

by Senator Bartlett (from eight citizens).

Trade: Live Animal Exports
To the Honourable the President and Members of the Senate in Parliament assembled.
The Petition of the undersigned notes the inadequate numbers of livestock available for Australian slaughter, food consumption and hides; the increase in Australian abattoir closures; the growing negative economic, employment and social impacts on rural Australia; and the unnecessary suffering endured by Australian livestock because of this nation’s pursuit of trade and financial benefits at any cost. Your petitioners call on the members of the Senate to end the live export trade now in favour of developing an Australian chilled and frozen halal and kosher carcass trade using humane slaughtering practices.
by Senator Bartlett (from 338 citizens).

Petitions received.

NOTICES

Presentation

Senator Conroy to move on the next day of sitting:

That the Senate calls on the Government to request the Productivity Commission, in accordance with the Productivity Commission Act 1998, to:

(a) undertake a thorough assessment of the impact of the free trade agreement (FTA) made between the governments of Australia and the United States of America in February 2004 on Australia's economy, focussing in particular on:

(i) the impact on employment and investment,

(ii) the impact on Australian agriculture,

(iii) the impact on Australia's manufacturing sector across states, territories and regions,

(iv) rules of origin,

(v) government procurement,

(vi) intellectual property,

(vii) the Pharmaceutical Benefits Scheme, and

(viii) the audio-visual sector; and

(b) report on any anticipated trade creation and trade diversion effects arising from the agreement and include in its analysis a full assessment of the environmental, social and cultural impact of the FTA.

Senator Payne to move on the next day of sitting:

That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 25 March 2004, from 4 pm to 6 pm, to take evidence for the committee’s inquiry into the second year of operation of the Senate order for the production of lists of departmental and agency contracts.

Senator Brandis to move on the next day of sitting:

That the Economics Legislation Committee be authorised to hold public meetings during the sittings of the Senate, from 4 pm, as follow:

(a) on Thursday, 25 March 2004 to take evidence for the committee’s inquiry into the Taxation Laws (Clearing and Settlement Facility Support) Bill 2003;

(b) on Monday, 29 March 2004 to take evidence for the committee’s inquiry into the provisions of the Treasury Legislation Amendment (Professional Standards) Bill 2003; and

(c) on Thursday, 1 April 2004 to take evidence for the committee’s inquiries into the New International Tax Arrangements Bill 2003 and the Tax Laws Amendment (2004 Measures No. 1) Bill 2004.

Senator Chapman to move on the next day of sitting:

That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 24 March 2004, from 5.30 pm, to take evidence for the committee’s inquiry into Corporations Amendment Regulations.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) according to the Australian Council of Deans of Education, there will be a teacher shortfall of about 5,000 teachers Australia-wide in 2005 and between 20,000 and 30,000 by 2010,
(ii) 40 per cent of junior secondary school students are currently taught maths and science by teachers who are not specifically trained in those subject areas,

(iii) 44 per cent of Australia’s 250,000 teachers are aged over 45,

(iv) demand for primary school teaching graduates will increase by 31 per cent and demand for secondary school teachers by 85 per cent, by 2005, and

(v) 3,330 people who applied and were eligible for teaching courses in Victorian universities missed out on places in 2004;

(b) warns federal and state governments that it is foolhardy to expect that teacher shortages will be filled by teachers who are currently employed in occupations other than teaching;

(c) calls on the Government, as a matter of urgency, to develop a national plan for addressing teacher shortages overall and in specific subject areas of short supply; and

(d) reminds the Minister for Education, Science and Training (Dr Nelson) that the gender imbalance in the teaching workforce is of less concern to parents than the crisis of overall shortages.

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) congratulates Australian distance runner, Benita Johnson, who won gold in the women’s 8 kilometre race at the World Cross Country Championships in Brussels on 20 March 2004;

(b) notes that:

(i) Ms Johnson is the first Australian in the 32-year history of the event to win any medal in the race, and that she won by more than 50 metres,

(ii) the world cross country meet is the most competitive distance race in the world, as each country can send up to six representatives, and that this race comprised 100 runners,

(iii) Ms Johnson currently holds the Australian 2, 3, 5 and 10 kilometre records, and

(iv) Ms Johnson developed her talent at the Australian Institute of Sport (AIS); and

(c) calls on the Government to ensure that the AIS continues to be adequately supported so as to promote future Australian sporting excellence.

Senator Ridgeway to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the opening of the Redfern Community Centre on 13 March 2004, and

(ii) that the centre, developed by the former City of Sydney Council after 18 months of community consultation, will provide a space for training and employment initiatives; art, sport, dance and self defence as well as local enterprise programs;

(b) commends New South Wales Governor Marie Bashir for coming to ‘the Block’ and joining with elder Aunty Joyce Ingram in officially opening the new Redfern Community Centre;

(c) notes the difficulty in finding lasting solutions to the problems in Redfern, in the absence of a balanced portrayal of the issues and the lack of leadership in driving the agenda for change forward; and

(d) calls on the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to visit ‘the Block’ and the Redfern Community Centre as a way to better inform herself about the issues for Indigenous people in urban areas.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.33 p.m.)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Textile,
Clothing and Footwear Strategic Investment Program Amendment Bill 2004, allowing it to be considered during this period of sittings.

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

**Purpose of the Bill**

The bill amends the Textile, Clothing and Footwear Strategic Investment Program Act 1999 to give authority for the formulation of the TCF (SIP) Scheme to enable the leather and technical textiles sectors to maximise their value add entitlement for the final two income years (2003-04 and 2004-05) of the Scheme.

This measure enables entities in these sectors to increase their access to the TCF (SIP) Scheme’s available grant funding up to a maximum value of $7.8 million over the two income years.

The TCF (SIP) Scheme provides for five grant types:

- grants in respect of new TCF plant/building expenditure (Type 1 grants);
- grants in respect of TCF research and development expenditure (Type 2 grants);
- grants in respect of TCF value-adding (Type 3 grants);
- special grants in respect of second-hand TCF plant expenditure (Type 4 grants); and
- miscellaneous grants in respect of TCF-dependent communities (Type 5 grants).

It is by virtue of section 14 of the Act that grants in respect of TCF value-adding under the Scheme are capped.

The bill provides the authority to formulate the TCF (SIP) Scheme in a manner that would give rise to the effect that would exempt entities manufacturing leather and technical textiles from the 5% of total value added cap for Type 3 grants. This would allow entities in the final two income years of the Scheme to fully match their Type 1, Type 2 and Type 4 grants with a Type 3 grant, up to an overall cap of $7.8 million.

**Reasons for Urgency**

Grants under the TCF (SIP) Scheme are paid annually in arrears, based on expenditure incurred in the previous income year, enabling the Scheme to make provision for firms who operate with a non-standard accounting year regime. A number of registrants are able to claim and seek payment of their 2003-04 grant entitlements from 1 January 2004. It is in order to ensure that these registrants are not disadvantaged by having to wait six to eight months before being able to access this new provision that passage in sought in the Autumn sittings.

(Circulated by authority of the Minister for Industry, Tourism and Resources)

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (3.33 p.m.)—I give notice that, on the next day of sitting, I shall move:

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

- Appropriation (Parliamentary Departments) Bill (No. 2) 2003-2004,
- Appropriation Bill (No. 3) 2003-2004, and
- Appropriation Bill (No. 4) 2003-2004.

I also table a statement of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

**Purpose of the Bills**

The Appropriation Bills request legislative authority for additional expenditure in 2003-04.

The bulk of funding for government programmes in 2003-04 was provided by the Appropriation Acts passed in the 2003 Budget sittings. These Additional Estimates bills seek authority for expenditure on activities which require additional funding or on new activities agreed to by the government since the last Budget.
Reasons for Urgency
Passage of the bills in the Autumn sittings will allow funds to be made available to agencies, thereby ensuring the continuity of government activities as the financial year draws to a close.
Unless new expenditure authority is in place in a timely manner, some activities of government agencies, some activities administered on behalf of the government and some activities of the parliamentary departments may not have sufficient funds to continue to the end of 2003-04 and new activities will not commence.

(Circulated by authority of the Minister for Finance and Administration)

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.34 p.m.)—I give notice that, on Wednesday, 24 March 2004, I shall 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:
Higher Education Legislation Amendment Bill 2004,
Sex Discrimination Amendment (Teaching Profession) Bill 2004, and
I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—
HIGHER EDUCATION LEGISLATION AMENDMENT BILL 2004

Purpose of the Bill
The bill will amend funding amounts in Part 2.2 of the Higher Education Funding Act 1988; amend funding amounts in and make technical amendments to the Higher Education Support Act 2003; repeal Part 4 of Schedule 1 to the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 to remove the unintended consequences of these transitional provisions in relation to Commonwealth funded places at the University of Notre Dame Australia for the period 2005-2008; and add a new transitional provision to enable payments under the Commonwealth Grants Scheme in 2005 where the Minister is satisfied that higher education providers have taken all reasonable steps within their power to meet the requirements of the National Governance Protocols and meet the workplace relations requirements by the specified date in 2004.

Reasons for Urgency
It is important that the proposed amendments to the Higher Education Support Act 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 are passed in the 2004 Autumn sittings given that higher education providers are beginning to plan the implementation of these reforms and will require certainty in terms of what they are going to be implementing. In addition, some of the amendments impact on guidelines issued under the Higher Education Support Act 2003, which the sector requires as soon as possible. A delay in passage of this bill until the Winter sittings would delay these guidelines and thereby have a negative impact on higher education providers.

It is also important that the proposed amendments to the Higher Education Funding Act 1988 are passed in the 2004 Autumn sittings to enable universities to be funded at the correct levels for 2004 as soon as possible.

(Circulated by authority of the Minister for Education, Science and Training)

SEX DISCRIMINATION AMENDMENT (TEACHING PROFESSION) BILL 2004

Purpose of the Bill
The bill makes lawful, despite anything else set out in the Sex Discrimination Act 1984, to offer scholarships to study teaching, to persons of one sex, to redress a gender imbalance in the numbers of males and females who are school teachers.
Reasons for Urgency
There is a need to address, as a matter of urgency, the shortage of male teachers in the teaching profession.
(Circulated by authority of the Attorney-General)

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 2004

Purpose of the Bill
The bill amends the Telecommunications (Interception) Act 1979 in relation to matters including the following:

• the definition of “class 1 offence”;
• interception” of e-mail and other text-based communications;
• telecommunications interception warrants for the investigation of State computer-related offences;
• communications to and from services used by the public to seek assistance in emergencies and to provide information on security matters.

Reasons for Urgency
The definition of “class 1 offence” in section 5 of the Act includes offences “constituted by conduct involving an act or acts of terrorism.” As currently expressed, the provision is effective only to permit warrants to be sought for offences involving an overt act of terrorism. There is an urgent need for law enforcement agencies to have access to telecommunications interception to assist in the investigation of all terrorist and terrorism-related offences, including offences in relation to terrorist organisations and terrorism financing offences which do not involve an overt act of terrorism.

The remaining amendments are intended to ensure the continuing effectiveness and integrity of the warrant regime established under the Act. It is necessary to clarify the application of the Act to delayed access message services (such as SMS and e-mail) in light of the widespread use of such services. There is also an urgent need to update the definition of “interception” in section 6 of the Act to take account of the fact that communications passing over a telecommunications system now frequently take the form of readable text.

State law enforcement agencies have expressed a strong desire for access as soon as possible to telecommunications interception to assist in investigating State computer-related offences. Emergency services organisations and security agencies have identified an urgent need for the Act to allow calls to and from the public to be intercepted without a warrant in order to maintain accurate records of requests for assistance in emergency situations and to capture information of security significance.

(Circulated by authority of the Attorney-General)

Senator Marshall to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to amend the Flags Act 1953 to recognise the Eureka Flag as an official flag of Australia, and for related purposes. Flags Amendment (Eureka Flag) Bill 2004.

Senator Nettle to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the call by international student leaders on 22 March 2004 for international students to join the country-wide student protest on 31 March 2004 that is calling for free education,
(ii) the growing fee burden experienced by international students, who were the first students to face upfront fees introduced by the then Labor Government and now extended to all Australian students under the policies of the Liberal Government, and
(iii) the move of some universities to allow for an increase in the yearly tuition fees paid by international students during the length of their courses;
(b) condemns the Government for its policies, which have resulted in spiralling student debt; and
(c) calls on the Government to reverse its regressive user-pays policies which are under-funding universities and driving
international and Australian students further into debt.

Senator Brown to move on the next day of sitting:

That the following matter be referred to the Legal and Constitutional References Committee for inquiry and report by 14 May 2004:

Whether any pressure was put on the Australian Federal Police Commissioner Mr Keelty in relation to his views or comments on the connection between Australia’s involvement in the war on Iraq and the threat to Australia’s security and, in particular, what communications took place between the office of the Prime Minister, other ministerial advisers or public servants and Mr Keelty in his capacity as Police Commissioner in relation to that matter.

COMMITTEES

Economics Legislation Committee

Variation of Reference

Senator FERRIS (South Australia) (3.37 p.m.)—by leave—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:

That the order of the Senate of 3 March 2004 adopting the 2nd report of 2004 of the Selection of Bills Committee be varied to provide that the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004 not be referred to the Economics Legislation Committee.

Question agreed to.

NOTICES

Postponement

An item of business was postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Forshaw for today, relating to the reference of matters to the Community Affairs References Committee, postponed till 24 March 2004.

ANTI-SEMITISM

Senator STEPHENS (New South Wales) (3.38 p.m.)—I move:

That the Senate—
(a) notes:
(i) the long history of anti-Semitism and its capacity to influence people to express hatred and carry out violence against Jewish people, and
(ii) the alarming rise in the incidence of violent anti-Semitic acts in many countries, resulting in injury and death of both Jewish and non-Jewish people, the desecration of Jewish cemeteries and memorials, and targeted assaults on individual members of the Jewish community; and

(b) in recognition of these developments:
(i) expresses its unequivocal condemnation of anti-Semitism, of violence directed against Jews and Jewish religious and cultural institutions, and all forms of racial and ethnic hatred, persecution and discrimination on ethnic or religious grounds, whenever and wherever it occurs,
(ii) resolves to condemn all manifestations of anti-Semitism in Australia as a threat to the freedoms that all citizens should enjoy equally in a democratic society and commits the Parliament to take all possible concrete actions at a national level to combat this threat to our peaceful and diverse nation, and
(iii) further resolves to encourage Australian ambassadors and other officials engaged in bilateral contacts with other countries to use their influence to oppose and counter anti-Semitic expressions and to promote all possible efforts at fostering tolerance and community harmony.

Question agreed to.

AUSTRALIAN COUNCIL FOR INTERNATIONAL DEVELOPMENT

Senator STOTT DESPOJA (South Australia) (3.38 p.m.)—I move:

That the Senate—
(a) notes that:
(i) the Australian Council for Overseas Aid (ACFOA) was formed in 1965 and continues to play a significant role as a representative and regulatory body for non-government organisations in Australia,

(ii) ACFOA provides representation, advocacy and a forum for cooperation for some 80 member agencies, and

(iii) on 10 March 2004, ACFOA will change its name to the Australian Council for International Development (ACFID);

(b) further notes that:

(i) the United Nations (UN) has warned that the international community is falling short of achieving the goals set by world leaders at the Millennium Development Summit in 2000 (the Millennium Development Goals),

(ii) Australia’s aid budget currently remains at 0.25 per cent of gross national income, which is less than half the level of contribution advocated by the UN,

(iii) ACFID’s submission to the 2004-05 Budget calls on the Government to explicitly adopt the Millennium Development Goals as benchmarks for ensuring the aid program is directly focused on the sustainable reduction of poverty, and in that context to provide for new initiatives focused on basic social services for poverty reduction, and

(iv) ACFID also calls on the Government to implement fair trade, debt relief and good governance policies, which underpin the poverty reduction objective of Australia’s aid program;

(c) calls on the Government to explicitly adopt the Millennium Development Goals as the benchmark for ensuring that Australia’s aid program is focused on effective aid delivery.

Question agreed to.

COMMITTEES
Foreign Affairs, Defence and Trade References Committee

Report
Senator COOK (Western Australia) (3.39 p.m.)—by leave—I move:

That the report of the Foreign Affairs, Defence and Trade References Committee on current health preparation arrangements for the deployment of Australian Defence Forces overseas be presented on 17 June 2004.

Question agreed to.

MATTERS OF PUBLIC IMPORTANCE

Anti-Semitism

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

The growing threat to the cohesion of Australian society of the rise of anti-Semitism.

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 clocks accordingly.

Senator MASON (Queensland) (3.40 p.m.)—It was, I remember, freezing cold standing on the Golan Heights, and on the plains below we could see the wreckage of some Syrian tanks. Our guide, David, who was a veteran of the Six-Day War and the Yom Kippur War, pointed to the north-west towards Damascus and said, ‘Brett, they hate us, you know.’ As Jeff Jacoby wrote recently:
Jews ... are the canary in the coal mine of civilization. When they become the objects of savagery and hate, it means the air has been poisoned and an explosion is soon to come.

Today, sadly, what has been called ‘the longest hatred’—anti-Semitism—is not only still alive but also thriving. Almost 60 years after the obscenity of the Holocaust, synagogues are burning across Europe and suicide bombers wreak death and destruction in Israel, while in the world media an unprecedented campaign to delegitimise and demoralise the Jewish state is being waged by an unholy alliance of Islamic fundamentalists, Western extremists, various other fellow travellers and what Lenin used to call ‘useful idiots’.

Across the Islamic world today, from Casablanca to Jakarta, from London to Lagos, the most virulent anti-Semitic propaganda is poisoning the minds of hundreds of millions by blaming every shortfall in Muslim societies on the existence of a Jewish state that is one-third the size of Tasmania. Meanwhile, in the words of Natan Sharansky, a former Soviet dissident and an Israeli government minister, ‘Anti-Semitism has become politically correct in Europe.’ Imagine it: it is now a sign of trendiness and political sophistication in Europe to hate and to disparage Jewish people.

Examples abound. A respectable Italian daily, La Stampa, publishes a cartoon showing the infant Jesus lying in front of an Israeli tank, saying, ‘Don’t tell me they want to kill me again.’ An opinion poll of European Union citizens shows that 59 per cent consider Israel to be the greatest threat to the peace of the world. The French ambassador to the United Kingdom at a dinner party refers to Israel as ‘that—expletive deleted—little country’ and says, ‘Why should we be in danger of World War III because of those people?’ Meanwhile in Australia our very own publicly funded broadcasters, the ABC and SBS, are bending over backwards to give the Palestinians the benefit of the doubt and to portray the Israelis as callous and cruel occupiers.

Where words lead, deeds do follow. It is no wonder then that Rabbi Abraham Cooper of the Simon Wiesenthal Centre describes the current situation as ‘the largest onslaught against European synagogues and Jewish schools since Kristallnacht’. While anti-Semitism has for a long time been a part of the staple rhetorical diet in the Middle East and other Islamic regions, in the West it was thought to be a spent force, an emotion extinguished by the verdict of World War II, the province perhaps of a few remaining mindless skinheads. But a lot has changed since 1945, certainly since 1967, and in the last few years in particular anti-Semitism has gone from being just a part of far Right mythology to becoming largely a disease of the Left. As Christopher Caldwell wrote recently:

What has been most shocking to the Jews of France is that the political class of their country, which has an anti-racism establishment to rival any in the world, has been largely silent about their—

the Jewish—

plight.

Very sadly, the same can be said about other Western countries where Jews have discovered that the much celebrated tolerance of postmodern, multicultural societies stops at the borders of Israel and does not even extend to some of our fellow Western citizens—the uppity Jews. In the words of Charles Krauthammer, the new anti-Semitism is much:

... more sophisticated. It is not a blanket hatred of Jews—

not anymore—

Jews are fine as long as they are powerless, passive and picturesque. What is intolerable is Jew-
ish assertiveness, the Jewish refusal to accept victimhood. And nothing so embodies that as the Jewish state—of Israel. This shift in the politics of anti-Semitism has caught many by surprise—but it should not have. It is not difficult to see why the Left has now picked up the mantle of anti-Semitism from the far Right. After all, the Left sees the free, liberal, capitalist United States as a source of evil and, conversely, lionises America’s every enemy. The nation of Israel and the Jewish people represent all that too many on the Left despise: the unapologetic commitment to democracy, free market, nation-state and military strength. It is a miniature United States, a Western enclave on the sea of the developing world. Let me reiterate this point for it is an essential one: those who hate Jewish people and hate the state of Israel almost without exception also hate liberal Western democracies, such as Australia and the United States, hate all our values and hate all that we stand for and all that we cherish. Anti-Semitism is only the other side of the anti-American and anti-Western coin. Those who want to destroy Israel and vanquish Jews also want to bring the Western world to its knees. What this means in practice is that we—the Jews and liberal Gentiles—are all in it together. The famous warning of the German anti-Nazi activist, Pastor Martin Niemoller, is ringing true once again:

First they came for the Jews and I did not speak out—because I was not a Jew.

The last time we did not speak out—the last time that Europe allowed itself to freely demonise and dehumanise its Jewish population—was a prelude to the Holocaust. Sadly, today there still exists a significant constituency which wants to see Israel wiped off the map.

It is difficult to understand a country unless one has been there to visit. Late last year I was lucky enough to go to Israel. A few words spoken by an Israeli army officer stuck in my mind then and they still ring clear today. He said, ‘Israel cannot afford to lose even one war.’ In Australia, national security is an important issue—of course it is—but in Israel in many ways it is the only issue. Driving from Jerusalem to the Mediterranean Sea is a shorter distance than from Brisbane to the Gold Coast. Driving from the West Bank to Tel Aviv on the sea, many of my colleagues in the House of Representatives would not even have left their own electorates. In Israel there is no margin for error. But the distance between the West Bank and the Mediterranean lengthens when every person of goodwill around the world stands up and shouts, ‘Israel shall not perish,’ when they will not allow anti-Semitism to go unchallenged and when they put the lie to Cain’s biblical evasion and say, ‘I am my brother’s keeper.’

Senator STEPHENS (New South Wales) (3.50 p.m.)—I too rise to speak today about the issue of anti-Semitism, and I am very pleased to see so many young people in the gallery who will perhaps learn a little bit about anti-Semitism in our society through this debate on a matter of public importance. We are here today to talk about the threat that it poses to the cohesion of our society, and I want to remind the Senate of the long history of anti-Semitism and the way that it can influence people to express hatred and carry out violence against Jewish people. Even here in Australia, where we pride ourselves on our communal harmony and religious freedom, there are individuals and organisations who spread intolerance and bigotry in our society. There has recently been an alarming rise in the incidence of violent anti-Semitic acts. The Executive Council of Australian Jewry, the ECAJ, keeps records of all anti-Jewish acts of vandalism, violence, intimidation and harassment reported by Australian people each year. Up to 2002 the
annual average number of reported incidents was 279. How extraordinary then that in 2003 the ECAJ received an unprecedented 481 reports.

Here are some of the statistics compiled by Jeremy Jones from the ECAJ database for 2003. There were 36 reports of physical violence and property damage, against an average of 23. They constituted the third highest total ever received. There were 58 reports of face-to-face harassment, including assault, compared to an average of 24. Threatening and abusive telephone calls were reported 23 times and there were 48 reports of anti-Semitic material sent through the mail. Anti-Semitic graffiti is on the rise. There were 64 reports of this as against an average of 36 reports. And leaflets, posters, stickers and emails were the subject of 252 complaints last year, against an average of 79. Consider for a moment what these figures mean in people’s lives. There were 481 reported anti-Semitic incidents and there were 481 or more distressed recipients of such abuse. What can these people think when they hear Australia referred to as a lucky country, the land of a fair go?

The outlook has certainly not improved. The latest figures from Jeremy Jones of the ECAJ show that in the first 10 weeks of this year 70 reports had already been received. Some examples of those include seven swastikas and the words ‘kill Jews’ burnt into the lawn of a government building using weed-killer, an incendiary device set off outside a synagogue, windows in a synagogue being smashed, people arriving at a synagogue being repeatedly subjected to anti-Semitic taunts, and several physical attacks on individuals. This offensive behaviour in Australia took place against a backdrop of massive increases in reports of harassment and attacks on Jews in Western Europe. Senator Mason referred to some of those in his speech.

Next year we will be celebrating the 60th anniversary of the end of World War II in Europe. It would be wonderful to think that anti-Semitism was behind us but in fact the opposite is true. A recent manifestation of this anti-Semitism in Europe included fans at a soccer match in Belgium waving Hamas and Hezbollah banners and chanting, ‘Jews to the gas chamber.’ And in Switzerland a woman was recently attacked for wearing a small Star of David necklace. Synagogues, cemeteries and Jewish institutions in Germany have been desecrated. In France there have been so many attacks on Jews in recent months that the chief rabbi has urged religious boys and men to wear baseball caps instead of yarmulkes in public. And in a leading Greek newspaper a journalist wrote that the Jews ‘have vindicated the persecutions of the Nazis’. The journalist continued, ‘They deserve such an executioner’—as Hitler—‘since they proved to be murderers themselves.’

In the light of these developments it is very important that we express our unequivocal condemnation of anti-Semitism and that we denounce violence directed against Jews and Jewish religious and cultural institutions. In fact, we must denounce all forms of racial and ethnic hatred, and persecution or discrimination on ethnic or religious grounds, whenever and wherever it occurs. Anti-Semitism is described as discrimination against, or denial of, the right of Jews to live as equal members of a free society. What I have recently come to appreciate is the extent to which anti-Semitism is flourishing, not just against Jews as individuals—for example in education, housing or employment—but also against the Jews as a people. This is very evident in public calls for the destruction of Israel and the Jewish people by terrorist organisations like Hamas. We also see it in the fatwas issued by radical Islamic clerics that proclaim it to be a reli-
igious obligation to destroy Israel and kill the Jews.

This genocidal anti-Semitism is very disturbing, but even more disturbing to me is the insidious anti-Semitism happening at all levels that is met with silence and even indifference. An example of what I mean is that the UN Commission on Human Rights singled out Israel for a country specific condemnation even before the annual session began. And 30 per cent of all the commission’s resolutions condemned Israel while major human rights violators were immune from any criticism. I wonder how many members of this chamber are aware that Israel’s humanitarian aid agency, Magen David Adom, is excluded from membership of the International Federation of Red Cross and Red Crescent Societies.

Unfortunately, such insidious racism is not unknown here in Australia. For example, in May 2002 two Australian academics called for an academic boycott of Israel. Their statement, issued in the Australian newspaper and Arena magazine, was signed by over 90 academics from a range of disciplines. In it Israelis are described as evil and immoral oppressors guilty of ‘crimes of war, massacres and colonization’. And the Palestinians are portrayed as defenceless innocent victims. It goes without saying that in a democracy there must be room for different opinions, and indeed in any informed debate we would expect to hear differences aired by our academic leaders. What a tragedy and what an offence to the sincere efforts of so many to find a peaceful resolution to the hostilities that the complex political situation in the Middle East should be reduced to such simplistic stereotypes.

A criticism of Israel may well be legitimate but all too often it becomes a vehicle for anti-Semitism. I want to alert all Australians to the danger of blurring the distinctions between criticism of Israel and anti-Semitism and alert them to the dangers of implicit and explicit national stereotyping and prejudice. These are likely to encourage and provoke the hostility to the Jews that is, as I have said, already on the rise. I am not for one moment suggesting or implying that Israel is somehow above the law or that Israel should not be held accountable for any violations of law. On the contrary, Israel—just like Australia and every other country—is accountable for any violations of international law or human rights. And I am not suggesting that the Jewish people are entitled to any privileged protection or preference because of the horrors of the holocaust. All I want to see is that those values that we in Australia hold dear—a fair go, justice, equality and respect—are applied to Israel and to Jewish people everywhere, because we cannot allow any people to be singled out for differential and discriminatory treatment.

It is our responsibility as members of this parliament and members of the human community to do what we can to prevent that. As Canada’s Minister for Justice, Irwin Cotler, reminds us:

... history has taught us only too well, while the persecution and discrimination may begin with Jews, it doesn’t end with Jews.

What can we learn from history about how such discrimination takes hold? The terrible injustices I have been talking about did not just happen; they had their genesis in the culture that produced the perpetrators. In the words of Professor Fouad Ajami:

The suicide bomber of the Passover massacre did not descend from the sky; he walked straight out of the culture of incitement let loose on the land, a menace hovering over Israel, a great Palestinian and Arab refusal to let that country be, to cede it a place among the nations, he partook of the culture all around him—the glee that greets those brutal deeds of terror, the cult that rises around the martyrs and their families.
Attitudes and values are cultivated in a society, and it is essential that we cultivate the right ones here in Australia. We know from our studies of early childhood that children are not born with the ability to hate. In fact, they cannot even learn it until they are at least three. Prime Minister Howard may publicly deride the so-called political correctness of our public schools, but the danger of such dismissive remarks is that they can lead us to overlook the fact that it is indeed imperative to teach our children from their earliest days to respect all human life and to detect and reject racism in all its forms. To quote the Nobel Peace Prize winner Elie Wiesel, ‘The opposite of education is not ignorance, but indifference.’

The promotion of social justice should be a core value in all our schools, public and private. To turn a blind eye to anti-Semitism—to laugh off intolerance of racism and injustice as political correctness—is to condone it and to allow it to grow unchecked. Anti-Semitism must always be publicly condemned so that we can build an aware community free of prejudice. To quote Jeremy Jones again:

In 2004, individuals and groups which promote anti-Jewish prejudice and carry out acts of violence, vandalism and harassment directed at the Jewish community in Australia must be clearly and unambiguously told that they are opposed by all decent, moral Australians.

And I would add to that, any time we detect a racist remark, an anti-Semitic slur or even a joke that trades on racist stereotypes, we should all choose to express our opposition rather than remain silent. I for one am prepared to be accused of having no sense of humour, if the alternative is to allow the seeds of hatred and injustice to spread in our society.

Of course, in Australia we are more fortunate than in many other nations because of the open and positive dialogue among Jews, Christians and Muslims. We must all work to maintain this dialogue. We must recognise that one aspect of our ethos—our easygoing nature—can lead us to feel comfortable with a position that does not set out to actively harm or injure Jewish people. This attitude is not strong enough for the situation we find ourselves in. We need to be much more alert to the danger of harming minority groups by our indifference or our ignorance. National stereotyping, both implicit and explicit, is a form of prejudice, and it is likely to encourage and provoke the hostility to the Jews that is, as I have said, already on the rise. We cannot appear to be willing to tolerate anti-Semitism or any other form of racism.

Yesterday, 21 March, was Harmony Day, so this is an appropriate time to take a stand against anti-Semitism—and indeed against any form of racism, prejudice and intolerance—and by our words and actions put into practice the best Australian traditional values of justice, equality, fairness and friendship. In conclusion, I thank the Senate for the formal adoption of the motion that I placed on the Notice Paper on 10 February. The motion expresses Australia’s concerns about the issues I have spoken about this afternoon and explicitly encourages those who represent Australia here and overseas to use their influence to oppose anti-Semitism and to promote efforts to foster harmony and tolerance for all.

Senator RIDGEWAY (New South Wales) (4.05 p.m.)—I rise to speak on behalf of the Australian Democrats in wholeheartedly supporting the condemnation of anti-Semitism and violence against the Jewish people both here in Australia and abroad. Though the persecution of Jews has a long history, I am personally reminded of the events of 6 December 1938, in which a Victorian Aboriginal man, William Cooper, led a deputation from the Australian Aborigines League to present a petition to the German
government through its consulate in Melbourne, condemning the persecution, violence and intimidation being carried out against German Jews leading into World War II through the practices of Kristallnacht. This is particularly important to me because, as far as I am aware, the first group in this country to protest the German government’s treatment of the Jews was from Aboriginal people—a little-known fact but for the dedication of a plaque unveiled at the Melbourne Holocaust Museum in December 2002 to commemorate the protest.

I join with the Jewish community again in the spirit of that endeavour to condemn many of the acts of violence, persecution and intimidation against Jewish people and to acknowledge that particular suffering. What more evidence is needed that such events from our past are not contained by the historical periods in which they occurred but live on in the way we continue to see present-day manifestations? I would also like to celebrate and put on the record the remarkable strength of the human spirit, which has seen the Jewish people time and time again rise above those frightening histories, and how it continues to play out in our daily lives. This is a particularly important matter of public importance because, in many ways, it provides us with the opportunity to dispel many of the myths that have been allowed to gain legitimacy because of world events over the past few years.

Unfortunately, many modern tragedies which political affiliations and niceties prevent us from discussing openly give licence to other things being said within our community—namely, the rise of anti-Semitism. It is now reported that attacks against Jews in this country are comparable to those of 15 years ago. In particular, I am personally incensed that there are reports of 27 attacks, 18 of those being from within my own state of New South Wales in the past six months, ranging from assault, denial of services, vandalism of private property and synagogues to the circulation of anti-Semitic material.

I was disturbed after having spoken to the B’nai B’rith Anti-Defamation Commission, which is well known within the Australian community, about the range of incidents in New South Wales, particularly in the last three to four months: in Vaucluse, a Jewish man was assaulted by having a glass bottle smashed over his head; in the Co-op Bookshop in Sydney, a Jewish woman was denied service; and a synagogue in the northern suburbs of Sydney was graffitied. A range of other incidents highlight the fact that much of what is being borne out in our community is simply the result of a gross distortion of reality.

Unfortunately, within the last 54 years there has been a calculated worldwide inundation of misinformation about Jewish people in all parts of the world, not just in relation to Israel. A clear affinity has developed between events connected with the Israel-Palestine conflict and the number and severity of anti-Jewish attacks all over the world. Many of the activities described as a criticism of Israel do have anti-Semitic undertones. In many instances, criticism of Israel does turn into unbridled attacks against Zionism and, implicitly, Jewish people. I wish to pay respect to the Jewish community of Australia and, more particularly, the B’nai B’rith Anti-Defamation Commission for taking it upon themselves to promote those values integral to a tolerant and understanding society. Members of that organisation are present in the President’s gallery.

Many of the activities we have witnessed in more recent times raise questions about the leadership obligations that we have as politicians and the need to deal with these issues and give the message loudly and very clearly as to what is expected within a fair
and decent society. No Australian should feel under threat of abuse, be spat on, be assaulted or have their synagogues or private property abused just because they happen to be Jewish. As Australians, we pride ourselves on democracy and its fundamental freedoms. Most of all it means that we have to uphold the rule of law and guarantee that there is a right to freedom for every citizen in this nation without fear or favour.

It seems to me that intolerance as a global struggle is exacting a requirement that we not vilify people for who they are, taking precise action and guaranteeing punishment for evil deeds, not just because they happen to resemble someone else. I am proud to give my full personal support to the Jewish community in Australia. It is far easier to fall on the negative side of the ledger, to look for those things that are different and to continue to espouse the negative things in order to demonise people on the basis of their religious beliefs or characteristics. We also need to keep in mind that, whilst we as a nation have led the way in many respects on human rights and stamping out racism, discrimination and anti-Semitism, it comes back to the fact that these values which we promote so openly and dearly as part of what makes up the character of Australia ought not be deserted in these difficult times. It is times like these when we call upon those values to remind ourselves that Australia as a nation has certainly been there to support Israel and the Jewish people time and time again. With recent world events, there is no question that these things ought not continue in the way that they have.

In many respects, we have to give leadership in a country with people from over 140 different cultural backgrounds. It is always going to be a difficult question of how to share power. It is quite problematic in practical terms because the wishes of the dominant culture will always take precedence. It puts an onus on us. This is coupled with the lack of understanding that many people have about other cultures and the potential for fear and resentment. This is what has been shown in the political debate over the past four years. However, saying that, I believe many Australians from all walks of life do appreciate the value of difference. It is important that we as a community and as political leaders spread the message of tolerance—but much more than that, understanding. We also, as political leaders in this country, have to lead Australians to move beyond tolerance towards a more united Australia when we see these things being acted out within our own communities, whether that be in New South Wales, Victoria, Tasmania or any other state or territory in this country. Unfortunately, there are many examples of intolerance that have plagued our society. In recent times this has been especially visible against Jewish Australians, and I think we ought to be mindful of that.

Finally, whilst much of the question of anti-Semitism is driven by world events and the politics of the Middle East, that ought not detract us from making a commitment to ensuring that lasting peace and reconciliation are achieved. If you go by the polls that were conducted last year, the majority of ordinary Israelis and Palestinians were keen to move forward and start developing a way of being able to cooperate with each other. We have an obligation to support those processes. Most of all where violence is occurring, violence itself will not justify the outcome. It ought to be condemned and, if that leads to anti-Semitic behaviour, we ought to condemn that too. It does not contribute to a cohesive national society.

Senator BRANDIS (Queensland) (4.15 p.m.)—I rise this afternoon to support the remarks of my friend Senator Mason, who has made the case against anti-Semitism and the cultural mainsprings of contemporary
anti-Semitism with his customary eloquence and moral passion, and those of Senator Stephens. The first point that must be made is that this is a bipartisan debate. The co-sponsors of this matter of public importance—Senator Mason and Senator Stephens—represent the mainstream of Australian politics from both sides.

Bipartisanship on this issue has a long history. From the point of view of our friends the opposition, we can trace it back to the distinguished role played by Dr Evatt. As President of the United Nations General Assembly, he was instrumental in the creation of the state of Israel in 1949. Bipartisanship continues to this day in the policies of the government and the opposition and also within the parliament in the contributions in the other place of Mr Pyne, the member for Sturt, and Mr Danby, the member for Melbourne Ports, in maintaining and fostering friendly relations between the parliamentarians of Australia and Israel.

This debate comes at a time of growing concern among Jewish people in Australia that anti-Semitism is on the rise and that that global trend is evident here. It is time for us in this parliament to reaffirm our commitment to two fundamental principles: that racism has no place in our political culture and that violence has no place in our political culture. It is also time to say that, while anyone is free to criticise any particular policy of the government of Israel, legitimate criticism must never be allowed to become a camouflage, a pretext or an excuse for attacks upon the Jewish people themselves. Alas, with alarming frequency in the recent past, that is what has been happening.

Senator Mason cited many instances of the emergence of that phenomenon in Europe. Anti-Semitism has become a new variety of political correctness. It has begun to take its place among a ghastly melange of fashionable postures along with anti-Americanism, antiglobalism, the kind of Arabist romanticism popularised by Edward Said, and a disgusting amoralism which elevates the Arab terrorist—commonly described in even the mainstream media by the sanitised description of ‘suicide bomber’—to the role of martyr: the latest bogus hero in the grisly pantheon of radical chic. Pause for a moment to think of the ideologisation of language that the description ‘suicide bomber’ implies: as if the most relevant fact about those who cold-bloodedly murder and maim countless innocent civilians—men, women and children—is that they take their own life too.

This debate comes upon the heels of an international conference on anti-Semitism, which took place in Montreal last week. In his keynote address to the conference Professor Robert Wistrich, the director of the international centre for the study of anti-Semitism at the Hebrew University in Jerusalem, addressed this issue and, in particular, the convergence of anti-Semitism and anti-Zionism, which he pointed out were initially two distinct ideologies. Today, however, while the convergence is not complete, the rhetoric of anti-Zionism has become one of the most powerful vehicles of anti-Semitism. Professor Wistrich said:

Such anti-Zionism is fundamentally discriminatory in negating even the possibility of a legitimate Jewish nationalism while idealising the violence nihilism of the Palestinian national movement. The anti-globalist crusaders against—Israel—regularly justify the terrorism, jihadism and anti-Jewish stereotypes to be found in Islamic fundamentalism. For most of the Western left, Palestinians can only be victims. Hamas bombers are militants engaged in legitimate resistance. They are never perpetrators of any crimes or responsible for their actions. Only Israel is to blame.
This world-view has penetrated the mainstream debate to the point where 60 per cent of Europeans regard tiny Israel as the greatest threat today to world peace.

Anti-Zionism is not only the historic heir of earlier forms of anti-Semitism. It is also the lowest common denominator between anti-theitical political trends in Europe and the Middle East—the only point on which they can agree. It is a bridge between the left, the right and the militant Muslims; between the elites, including the media, and the masses; between the church and the mosque; between an increasingly anti-American Europe and an endemically anti-Western Arab-Muslim Middle East; a point of convergence between right-wing conservatives and left-wing radicals and a connecting link between the generations.

Anti-Zionism is no longer an exotic collection of radical chic slogans that somehow survived the debacle of late 1960s counter-culture. It has become an exterminationist, pseudo-redemptive ideology in the Middle East which has been re-exported to Europe with devastating effect.

And not just to Europe. Jeremy Jones, the President of the Executive Council of Australian Jewry—whose presence in the gallery I acknowledge this afternoon—wrote in the current issue of The Review:

There were a number of articles published and speeches given—
in Australia—
over the past year on the seeming acceptability of antisemitism by significant sections of the political left which wear their claims of anti-racism on their sleeves. It is worth noting that antisemitism mouthed by people who are seen to be part of a broad left or progressive segment in Australia seems to escape the censure that is not only due but which comes automatically to racism voiced by people perceived to be conservative or right-wing.

The exact relationship between anti-Jewish rhetoric and racist violence directed at Jewish individuals and Jewish institutions is not always certain. It would be ridiculous to suggest, however, that there is no connection between incitement and action.

We see that phenomenon in Australia today with the rise in the number of violent acts against Jewish Australians from an average of 279 in the period 1909-2002 to 481 incidents in 2003. The link between the language which gives cultural respectability to, and thereby extends the bounds of political acceptability of, anti-Semitism, and the outcome—violence against our Australian Jewish citizens—is impalpable but distinct. It is for us, the senators and members of this parliament, to denounce it to the echo.

Senator CARR (Victoria) (4.23 p.m.)—I support this discussion on anti-Semitism as a matter of public importance and I do so unashamedly as a member of the Australian Left. We have heard so much claptrap spoken today that I think it is appropriate we get a balance in this discussion. What we have heard today is, I am afraid, claptrap from a group of people who now unfortunately pass for what is left of the Left of the Liberal Party, and that is a measure of how their position has deteriorated in recent times.

I take the view, unashamedly, that anti-Semitism, like all other forms of racism, must be unequivocally condemned. Anti-Semitism is one of the most ancient forms of racial vilification and one which has been deeply ingrained within our culture throughout time. People might well ask: why is it necessary to move a proposal to discuss an issue like this in a country such as this about something which the majority of Australians would have no time for? It is necessary, unfortunately, because this country has become so blase about the stereotypes that are so often presented, as we have heard this afternoon.

We have a situation where we must state strongly and clearly that Australia will not tolerate racial hatred of any kind and that, if
ignored, it can all too easily take root in this country and grow like a noxious weed. In other times and other places we have seen that lunatic minorities, when they are ignored, become powerful majorities. Small liberties have been taken away from people first, only to become large-scale programs of dehumanisation. Our outrage at such developments can diminish in increments until we do not see them as being wrong anymore or we claim that we do not see them at all. We must always be on guard against such numbness.

Eric Hobsbawm—yet another great left-wing historian, and a Jew—in his book *The Age of Extremes* highlights this very dilemma. He says that the impersonal nature of prejudice allows acceptance of otherwise repugnant behaviour. He states:

Hardworking German bureaucrats, who would certainly have found it repugnant to drive starving Jews into abattoirs themselves, could work out the railway timetables for a regular supply of death-trains to Polish extermination camps with less sense of personal involvement. The greatest cruelties of our century have been the impersonal cruelties of remote decision, of system and routine, especially when they could be justified as regrettable operational necessities.

So, while the public servant or the politician can be the instrument of racism, they can also be an instrument for its rejection. It is our duty as public figures to ensure we remain highly attuned to anti-Semitic and racist developments within our community. We must defend the values of a humane political culture. We must institutionalise tolerance and acceptance of diversity to ensure that the reverse, the institutionalisation of cruelty, does not happen.

This is at the core of multiculturalism and, for me, this is also at the core of social democratic values. Sadly, we have seen within this country, as we have seen across the Tasman, a growing tendency through our public dialogue to accentuate xenophobia and racial stereotyping and to play upon people's insecurities. While it may seem easy to stand here and condemn what is obviously wrong—that is, the vilification of people based on race, religious or ethnic grounds—it is always important that we do condemn it. It is frighteningly easy for public leaders to exploit the politics of race and resentment, to play upon fears of the other, to demonise the outsider: in short, to undermine the principles of democracy. It is important that in supporting this discussion Australia's political leaders affirm their refusal to exploit the politics of race. Wherever fear and suspicion exist in the community, it is our role not to kindle such flames but to extinguish them decisively. Not only must we condemn those who vilify and persecute but we must also be prepared to make amends for those wrongs and to offer support and, where necessary, refuge.

The discussion is timely and it is appropriate in the current environment, as the devastating actions of minorities have created fear and division and strengthened our racial and religious stereotyping. When the federal parliament condemns anti-Semitic racism, I hope it will remind all citizens that the hatred of people—any people—because of their culture and their religion is unacceptable in this country. We must recognise that religious fundamentalism, which dehumanises other people by pitting them as inferior and wrong, allows adherence to hate and false persecution with a clear conscience. Not only must we recognise that those who adhere to religious beliefs or practices are entitled to their views but we also have to recognise we do not have to support religious fundamentalism. We must also recognise that fundamentalism is not restricted to any one religion.

This discussion is particularly timely because there has been an alarming increase in
the number of anti-Semitic attacks in Australia and elsewhere in the last few years. Jewish organisations, such as the Anti-Defamation Commission, have documented these attacks against Jewish communities, synagogues and individuals in Australia. Intimidation, violence and the murder of Jews have increased in Europe, which I think we have all drawn attention to. We have seen that situation in Turkey and France. There has been an exponential rise in anti-Semitism in eastern Europe, particularly since the break-up of the Soviet Union, where a range of tribal hatreds, violence, neo-nationalist actions and fascist and authoritarian movements have re-emerged under the dubious name of ‘free speech’. I remind Senator Mason that many of those involved also proclaim to support the free market and US foreign policy.

In Russia there have been several reported cases of the re-emergence of that dreadful medieval disease, the bubonic plague—something we thought had gone forever. Anti-Semitism, in my judgment, can be likened to such a disease—insidious, contagious and deadly. It seems strange that both have re-emerged in the wake of the collapse of political order and in an environmental vacuum of public political morality. Muslim communities have also pointed out that they feel under considerable pressure as a result of racism—and in this country as well. I remind the Senate that historically it was the Catholic Church that embedded anti-Semitism in Western culture centuries ago. During the Middle Ages many Jews were forced to flee persecution and undertake conversions. They were subject to numerous pogroms at the hands of the Inquisition. They found refuge in Muslim communities.

So anti-Semitism predates the Balfour Declaration. Sadly, today vilification and violence against Jews are more commonly associated with opposition to the modern state of Israel. There is no doubt that some anti-Israeli activism, particularly in Europe, is inherently anti-Semitic. However, I certainly do not support the proposition that all criticism of Israel is anti-Semitic. Just as multicultural societies encourage a diversity of people and beliefs, a democratic society also encourages a diversity of opinion. For all its flaws, Israel is essentially a democratic society. It is a society with a vibrant array of dissenting groups and voices from both the Left and the Right. Many of these voices, including Jewish ones, are highly critical of the current Israeli government’s policies and can hardly be accused of being anti-Semites.

Similarly, non-Jewish voices in Israel, the Arab world and elsewhere are critical of Israel and cannot automatically be condemned as anti-Semitic. It should be remembered that Zionism itself grew up within the socialist movement. I do not believe that the Left, particularly in Australia, is the traditional home of anti-Semitism and anti-Zionism. A basic commitment to human rights and social democracy must allow for a critical examination of the record of any state, including Israel. I say that having had the benefit of participating in two delegations, where I saw the Golan Heights from both sides of the border and the Lebanese border from both sides. Therefore, I can say with some authority that, as a critic of the current Israeli government’s policies, I condemn the demonisation of the state of Israel and the Jewish people. Racist and anti-intellectual words of attack on Israel as a state and on the Jews as a people only give succour to those who try to justify physical attacks on Jewish communities as political acts. They have no place in a constructive debate about securing a peaceful settlement between Israel and its neighbours. (Time expired)

Senator McGauran (Victoria) (4.33 p.m.)—That was what was left of the leftovers of the Left. I wish to add my support to
the matter of public importance being debated today. Its importance to the Senate can be gauged by the fact that it is supported by both sides of the house—a rare if not unique event for such debates in our Australian parliament. But the reason for this debate is good and timely. The motion we are debating today in essence calls upon the Senate to support an unequivocal condemnation of anti-Semitism.

As has been said many times before, Australia is one of the great multicultural societies in the world. We house 100-plus different nationalities and in the main live in a harmonious and tolerant society. Moreover, we have avoided the open ethnic wars so prevalent in so many parts of the world. Nevertheless, regrettably, like all countries, we have had to fight back strong elements of anti-Semitism and violent reaction against Jewish institutions. In politics we are only too aware of the fluctuating influence of the extreme Right and Left political groups—mad and racist groups such as the LaRouche society, the League of Rights, the Citizens Electoral Council and so on. Now there is a new element with the extreme Islamic fundamentalists. All these groups are organised and resourced against the Jewish race.

The proven way to stem their flow of hatred and lies is to stand up publicly against them. The tactic of ignoring such madness rarely works. It is necessary to bring information and good argument to an often uninformed but not naive public. This is how you silence and turn the tide on such racism. While Australia has a proven record in race relations, history shows the fragility of human rights when a society is under pressure or attack. History has shown us that it is so easy to single out a scapegoat for society’s problems. It would be so easy now for the anti-Semites to say that the war on terror is all the fault of the Jewish occupation of Israel—the illegitimacy of Israel—and that the threat of terror upon Australia would go away if we stopped supporting the Jews. This is false. It is a way of seducing people to anti-Semitism, and that is why we need to stand up in this forum and speak against this pathological propaganda. This seduction, which Australia must avoid, has regrettably taken root in Europe. There is a strong element of anti-Semitism rising within Europe which, given our culture and our economic and political links with Europe, could easily influence this country unless we remain aware.

Europe has a long and shameful history of anti-Semitism, an undercurrent of which seems to remain. The new anti-Semitism employs images not too different from those of the past. It condemns the Jews as controlling the world’s only superpower, the United States, and occupying the criminal and illegitimate state of Israel. Europe has confessed to a recent and worrying rise in 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 of the commission and the European Union regarding the rise of anti-Semitism in 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 member states and the European Union’s human rights agency to draft measures and proposals to combat this rise in anti-Semitism. At the international level, the president urged the United Nations General Assembly to adopt a resolution on anti-Semitism. However, it is in some parts of the Middle East, in the Arab world, that anti-Semitism takes on its most obsessive and hateful form.
The attack on the Jewish person goes beyond the legitimate debate on the policies of the state of Israel. It occurs daily through many of the Arab newspapers, weekly and monthly magazines and television. Television serials depicting Jewish monsters are shown regularly. The hatred and the lies about the Jews begin in the education system. This horrific mass propaganda is not challenged by the authorities; rather, it is promoted by them. It seems the only link these mostly Middle Eastern dictatorships have with their oppressed and poverty-stricken people is the promotion of an enemy at the gate, which is the Jew. I am sure this institutionalised hatred is a strong reason why these countries have not modernised.

I saw this anti-Semitism at work when I visited a prominent Middle Eastern country nearly two years ago, just prior to the war in Iraq. Because Australia was part of the coalition of the willing, my delegation received access to the highest political and academic authorities. There was rarely an occasion that leading authorities did not take the opportunity to attack Israel and Jews. On one occasion, a leading academic absurdly blamed the Jews for September 11. This was a lie that permeated the society unchecked. With this in mind I support the sentiments of the motion that encourages Australian ambassadors and other officials engaged in bilateral contacts with other countries to use their influence to oppose and to counter anti-Semitic expressions and to promote all possible efforts at fostering tolerance and community harmony.

I conclude by supporting the part of the motion that condemns all manifestations of anti-Semitism in Australia as a threat to the freedoms that all citizens should enjoy equally in a democratic society and commits the parliament to take all possible concrete actions at a national level to combat this threat to our peaceful and diverse nation. I urge the Senate to support this matter of public importance.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! That concludes the debate on this matter of public importance.

DOCUMENTS

Australia-United States Free Trade Agreement

Senator JAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (4.41 p.m.)—I table volumes 1 and 2 of the Free Trade Agreement between Australia and the United States of America.

Senator COOK (Western Australia) (4.41 p.m.)—by leave—I move:

That the Senate take note of the document.

At last, the free trade agreement arrives in the Senate. That gives the Senate a chance to have formally before it the documents concluded in these negotiations. It also enables the committee which the Senate in its wisdom has appointed to review the FTA to have those documents formally before it so it can conduct its inquiry. There is a question, though: do we in fact have the final document? I have just asked for, and the Clerk has just handed me, the documents tabled by the government. Those documents are headed ‘Draft, subject to legal review for accuracy, clarity and consistency, March 1, 2004’. That legend has appeared at the masthead of the documents that the government has provided publicly. It seems that what we have here is not the final document concluding a free trade agreement between two nations, Australia and the United States; rather, it is a draft of that final document.

This document is still subject to continuing legal review. What is on the public record is not the black-letter terms of what
would be ultimately concluded between these two countries; rather, it is a draft version of that. Given that this agreement was concluded a month or more ago, it raises the question: what changes may occur between the draft and the final document? What will the significance of those changes be? I accept the words of the department that these are minor matters and there will not be very much change, but often on small things great consequences depend. If the changes are minor, the implications of those changes need to be properly assessed.

Mr Acting Deputy President, I take the opportunity now, through you, to put a question to the minister who tabled these documents, which maybe government speakers can answer: can the Senate be given a clear date by which the final document setting out the exact terms of the agreement that this country would want to enter into with the United States will be available for our consideration?

This document is a weighty tome. It comprises over 1,000 pages, 23 chapters, four annexes and around 50 side letters on matters pertinent to the negotiations. It contains a broad range of issues, including tariffs, agriculture, manufacturing, health, telecommunications, intellectual property, labour issues and environmental matters. To implement the FTA the government says it will need to make a small number of legislative changes—that is, bills will come to this chamber to amend the existing law to make real the commitments entered into in the draft document we have before us. If the Senate or the House declines to pass those bills, or any part of them, or seeks to amend them then the whole of the agreement is suspended and may not come into effect. The government has indicated to us that it wants the legislation arising from this agreement to be implemented in time to enable the FTA to come into force before 1 January next year.

I have been appointed as Chair of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. We will now proceed to meet and review these documents. I can promise the Senate that we will go about our task thoroughly and fully. Australians need to know all the implications and they need to know them fearlessly and frankly. They need a proper objective survey of all those implications. Trade agreements are not just agreements between countries; they deeply affect the internal economics of a nation. They deeply affect the industry organisation and arrangements—what is competitive and what is not. They affect cultural values and they affect social issues—for example, if people are displaced from work in one sector, will there be jobs for them in another sector and how will they obtain the relevant skills to make themselves eligible for that employment? These important questions arise from trade agreements and they need to be examined in some detail. The inquiry will do that.

The government has made a number of statements—and I will canvass a couple of them now—which cause us to pause. This government does not have a good record in telling the truth to the Australian people about matters of great importance. I say that honestly, hand on heart, because I chaired the ‘children overboard’ inquiry. That inquiry found that ministers had in fact lied—and I use that word advisedly because it is a finding of the report—to the Australian people about what had occurred. We found the same with the elusive question: where are the weapons of mass destruction? When the government says, hand on heart, that these things are true, we need to stop, pause and examine to see whether or not the facts justify that claim.

The government claims that this is a once in a lifetime opportunity to secure a trade
agreement with the United States. That is one of the statements it has made. The reality is that, over the past 20 years, Australian governments have negotiated a trade deal with the US on at least four other occasions. On those occasions it was decided Australia’s broad economic and trade interests would not be well served by a bilateral trade agreement with the United States. We have heard from the government that this is a free trade agreement. The words ‘free trade’ are bandied about with considerable frequency. In reality, this is not a free trade agreement. The deal does not give rise to free trade in agriculture. It excludes sugar. It takes 18 years to reduce tariffs on beef. It maintains quotas on dairy products and imposes safeguard measures on beef and horticultural products. The NFF said:

This is not a free trade agreement and it fails to secure open access for Australian agriculture, but it offers improvement in access for some farm products.

The government claims the deal will generate significant benefits for our manufacturing sector. It is instructive to know that, when the Minister for Trade was asked at the National Press Club shortly after the conclusion of the agreement, ‘What will the impact be on Australia’s trade deficit with the United States by the implementation of this agreement? Will it widen or will it narrow?’ he could not answer that question.

It is instructive to know that the government cannot now look the Australian public in the eye and say what the economic value of this agreement is. They have concluded this agreement and after signing on the dotted line that they are committed to it, they are now undertaking economic modelling to see what the value is. One would have thought that there would have been some ongoing modelling to ascertain the value of the agreement before the government committed the country to signing it. If the value is not great, there may well be justification for asking the government to go back and negotiate harder and better to achieve something more worth while for the Australian community. If the agreement, in fact, exacerbates our trade deficit, widens the gulf between us and the United States and makes us an importer rather than an exporter of anything substantial, maybe then there would be a justification for looking at it in greater detail.

What are the benefits for the manufacturing sector? The government claims that they are considerable. That claim will be thoroughly assessed. I point out now, though, that the rules of origin to determine whether Australian exports can benefit from reduced US tariffs may be so restrictive that they deny preferential access to many Australian products because those products may have in them, according to the new rules of origin, too many New Zealand, Asian or European inputs.

The government claims our sugar industry is no worse off because of this deal. The sugar industry never got anything out of this deal and by doing this deal, we may well have blighted the chances of the sugar industry getting anything out of a World Trade Organisation negotiation, in which case the sugar industry will be considerably worse off. The government claims that this deal is a big win for the Australian services sector. That is a claim that we will thoroughly test. The government claims that this deal opens up the US federal and state government procurement market to Australian firms. We know that only 27 states of the US union have signed this deal, so it does not open the procurement market for the whole 50 states. We know that, when the US did a deal with Chile, over 37 states signed on. California has not signed on for Australia, so the value of this deal is another matter to be examined.

(Time expired)
Senator FERRIS (South Australia) (4.52 p.m.)—It is with a great deal of pleasure that I rise to speak at the tabling of this quite historic free trade agreement that has been negotiated with the United States of America. I take this opportunity to applaud the outstanding work of our Minister for Trade, Mr Mark Vaile, and the Department of Foreign Affairs and Trade officials who produced the 1,100-page text of the free trade agreement in absolutely record time.

The Free Trade Agreement between Australia and the United States of America will link our economy with the strongest, the biggest and the most robust economy in the world, an economy which, at almost $10 trillion, is one-third of the world’s GDP and a market of more than 280 million customers, and we have the same population as Los Angeles County. How fortunate are we as a country to have the opportunity to negotiate such a historic agreement with the United States. Not only is the United States the world’s largest and most innovative economy but also it is one of the fastest growing. Over the last decade the United States grew at 3.3 per cent, which is faster than both Europe and Japan. It is without doubt in Australia’s long-term national interest to be much more closely integrated with the US economy.

More than 97 per cent of our manufactured exports to the United States, worth $5.8 billion last year, will become duty free from day one of the free trade agreement. I am not sure whether Senator Cook actually recognised that in his contribution a few moments ago: 97 per cent of our manufactured exports to the United States, worth $5.8 billion, will be duty free from day one. What an opportunity for the manufacturers and the exporters of this country. I see my colleague Senator Ian Macdonald sitting in the chamber. As he has pointed out on a number of occasions in answers to questions, more than 66 per cent of the agricultural tariffs in the United States will reduce to zero from day one of this agreement. This number will increase by another nine per cent in the following four years. So 75 per cent of the agricultural tariffs in the United States will reduce to zero within four years of this agreement having been signed.

I would like to mention some of the benefits to my home state and yours, Mr Acting Deputy President Ferguson, of South Australia, and how the free trade agreement, if it is supported in this place, will affect our state from 1 January next year. Under the FTA, from day one the United States will remove all tariffs on automotive products. So exports to the United States auto market, worth $538 million for passenger vehicles in 2002, will grow very significantly. Let us not forget that the statistics provided by the Federation of Automotive Parts Manufacturers, the industry association of component manufacturers, show that total sales in 2001 for the South Australian component industry were worth more than $1.48 billion, with the local content in Australian made cars now at about 80 per cent. So a very significant change will occur in our automotive industries in our home state of South Australia, Mr Acting Deputy President. For Mitsubishi and Holden, two of South Australia’s most important employers and export earners, the immediate elimination of the 25 per cent tariff on light commercial vehicles means that very soon we could see a South Australian built Holden utility joining the South Australian built Monaro on United States roads.

It is not only the automotive industry in South Australia that will benefit. Our seafood industry, which is already a very significant export success in the United States, is set to grow exponentially as a result of the proposed free trade agreement. The South Australian tuna industry alone contributes $384 million to Australia’s gross food revenue per annum. That is a very significant figure from
our relatively modest city of Port Lincoln. Under the proposed free trade agreement, Australian seafood exports to the United States will become tariff free immediately. How significant is that. The removal of a 35 per cent tariff on canned tuna will give producers in Port Lincoln, South Australia, access to the $650 million US market. What an extraordinary opportunity for a small town like Port Lincoln.

Russ Neal, the CEO of the Australian Seafood Industry Council, welcomed the free trade agreement and said that ‘these tariff cuts will bring significant relief to our seafood industry. The removal of the tariff alone is worth $20 million in the first year’.

Senator Ian Macdonald—That’s fantastic.

Senator FERRIS—What a fantastic opportunity for our seafood exports to the United States. I want to turn to the wine industry, again in our home state of South Australia, Mr Acting Deputy President. One of our best-known exports is wine. Whether they are from the Barossa, the Clare Valley, the McLaren Vale or the Coonawarra regions, our wine labels are now recognised around the world. In 2002 South Australian wine exports were valued at $1.4 billion, up 21 per cent on the previous year. By 2002, 75 per cent of all Australian wine exports originated from South Australia. Tariffs on this very important export to the United States will be phased out over the next 11 years. A number of pieces of material used by winemakers come from the United States and there will be benefits there as well, particularly the import of stainless steel machinery for winemaking. I am advised that wine consumption in the United States is set to increase and so, at a time when lucrative markets are set to expand, wine producers will be able to access them unhindered by the old tariff barriers—another great benefit for South Australia.

But wait, there is more. Our agricultural producers will also gain significantly from the free trade agreement tabled in the Senate this afternoon. Our food industry is worth $9.4 billion per annum and is targeted to reach $15 billion by 2010. Our processed beef exports contribute 23 per cent, or $433.3 million, to South Australia’s gross revenue. Under the free trade agreement our Australian beef producers will have access for an additional 15,000 tonnes of beef in year 2, increasing to 70,000 tonnes by the 18th year of the free trade agreement. In the last year the South Australian horticultural industry expanded by over 100 per cent, and horticulturalists are also set to benefit from the free trade agreement. There will be immediate tariff elimination on many horticultural products—including oranges, mandarins, strawberries, tomatoes and cut flowers—that are grown in South Australia. What a great opportunity for South Australia this free trade agreement is.

I, like Senator Cook, am looking forward to examining in more detail the issues contained within the free trade agreement during the deliberations of the Senate select committee, which is set to begin its hearings very soon. But it would be an absolute tragedy if Australia squandered such a historic opportunity to enter into an agreement that will provide massive benefits to our economy and to my home state’s—South Australia’s—economy for many years to come.

Senator RIDGEWAY (New South Wales) (5.02 p.m.)—I rise today to speak to the tabling of the long-awaited text of the Free Trade Agreement between Australia and the United States of America, which is now before the parliament and is being scrutinised by various committees. The deal has been done; what remains now is to determine
whether or not it is truly in Australia’s national interest. This massive document, of Sydney White Pages proportions, contains within it the key to our economic, social and cultural future. That is a sobering thought, given the complexity of the detail that we have to go through. It is incumbent upon the Senate, nevertheless, to be very thorough and to carefully scrutinise every aspect of this deal. The Democrats are committed to this process.

First, I would like to turn briefly to comments made by US Trade Representative Robert Zoellick that were recently reported in the Australian. They speak volumes about exactly what sort of deal we have here. Mr Zoellick spoke proudly about what a great deal this was for America and how they had resisted Australia’s pleas for even a little more access:

And we have an 18-year phase-out that Prime Minister Howard personally was pushing to get lowered, which we didn’t lower. And it actually should work well with our industry … because we only increased the quota for manufactured beef.

The article also referred to the following comments:

On dairy products, Mr Zoellick sounded especially pleased, using irony to call the Australian increase “huge” and trumpeting the fact that Canberra had been unable to end the tariff protection for US dairy farmers. “And, frankly, in terms of dairy, I think we’ve increased our quota—didn’t touch the tariffs one bit—the huge amount of about maybe $30 or $40 million a year.”

These remarks are quite extraordinarily boastful. It is more than embarrassing; the fact that the Prime Minister made a personal appeal and was rejected, and the Americans are boasting about it, is particularly humiliating for this country—most of all the government. As we are all aware, there have also been rumours that DFAT officials advised the government to walk away from the deal in its current form. Yet this government, desperate to cement its relationship with the USA, decided to go for it anyway—on whatever terms the Americans were prepared to offer.

It is also important to note that we remain at the mercy of the US Congress in respect of this trade deal. They get to vote on the deal; we do not. There has been all this effort and there have been so many huge concessions, and yet it might not be good enough for the US. There have been recent reports that various US sectors are lobbying against the ratification of the deal. Last Thursday the Australian reported that apparently American unions have now attacked the proposed FTA, arguing that it will cost jobs in the United States. Just yesterday the United States Ambassador to Australia, Tom Schieffer, admitted that getting trade deals through the US Congress was very difficult politically. It seems that there are very few people, even in America, who actually think that this deal is a good one.

The exact nature of the impact this deal will have on vulnerable sectors of the Australian economy will be uncovered through the process of the Senate select committee inquiry. I look forward to participating in that process and to uncovering the truth about how this deal will affect our economic, environmental, social and cultural future. I think that a number of issues need to be raised beyond that. It simply comes down to the fact that the national interest is about more than basic economic considerations. It is also about our social and labour standards, the preservation and improvement of our environment, and our national cultural identity. These must also be taken into account in any trade decision.

Wide-ranging trade agreements such as this FTA will have an impact on every facet of our life, and they must be assessed in terms of what has been won against what has
been traded away. They will have a critical impact on our national sovereignty more generally. We have to be vigilant to ensure that the terms of the agreement do not affect our government’s ability to regulate freely in the national interest in the future. These are all very important issues that have to be considered as part of the process. They are things that have been debated in the past few weeks. Mr Acting Deputy President Cherry, I have a number of other comments. I seek leave to incorporate my remaining remarks in Hansard.

Leave granted.

The speech read as follows—

The Government has recently announced that the Centre for International Economics will carry out economic modelling and analytical work to assess the impact of this FTA.

As we all know, it was the work done by CIE consultants that provided the basis for the APEC Study Centre report commissioned by DFAT before negotiations for the FTA began.

This report has been widely criticised for using unrealistic assumptions and completely overstating the net gains to Australia arising out of the Free Trade Agreement.

Minister Vaile announced only last week that this economic modelling job would be put out to public tender.

We called on him at that point to ensure that a triple-bottom-line approach was used. The Senate passed a motion calling on the Government to do just that.

As it turns out, we should have saved our breath; there was no chance they were ever going to listen. The process had already begun; the DFAT press release indicates that the process was in train on 25 February.

The Minister misled the Parliament. The Government has tried to assure us all that they are willing to publicly prove the benefits of this deal, in an open and transparent manner.

How can we take this seriously when they lied about the process, and then awarded the contract to the same people who gave them the result they wanted last time?

If they lied about this, then how are we to believe their rhetoric about the benefit of the deal?

The deal appears to have some very serious shortcomings from an Australian perspective. While the Government says critical areas such as the PBS, Australian content in media, quarantine and foreign investment have been protected, these claims do not appear to be supported by the evidence in the text.

The Democrats have been on the record continually expressing our serious concerns about the impact of the deal on the PBS (including generic drugs), Australian culture and media, foreign investment, quarantine standards and the delivery of public services.

In closing, it is worth nothing that our trade deficit with the US is already massive. As was noted recently by Dr Elizabeth Thurbon and Professor Linda Weiss, Australia has long run a massive trade deficit with the US, which now stands at around $9 billion, and is the second-largest trade deficit with the US in the world.

The balance of this trade agreement—with negligible improvements for our highly competitive agricultural sector, and an opening up of a wide range of newer Australian industries—is likely to make this deficit even worse. As Dr Thurbon and Professor Weiss rightly point out,

“While the US has managed to keep its weakest industries effectively shielded from Australian competition, we have agreed to open our weakest industries to an onslaught of highly competitive US imports. Our IT, financial services, telecommunication, media, and pharmaceutical industries (just to name a few) will face intense competition from their more mature and cashed-up American counterparts.”

Senator NETTLE (New South Wales)
(5.07 p.m.)—The text of the US-Australia free trade agreement that has been tabled in the Senate today is not an enjoyable read for those people who care about the public interest of Australia and protecting our services: for example, our Pharmaceutical Benefits Scheme or our cultural industries. It is not
even a good read for those people who want to have the gates of US protectionism opened up, as the government articulated going into this deal, for Australian farmers who want to get into the US marketplace.

The Prime Minister said last week that this deal was a ‘no-brainer’. I agree with the Prime Minister. It is a no-brainer to want to protect our Pharmaceutical Benefits Scheme, which is widely recognised as one of the best mechanisms in the world for ensuring that people are able to access affordable medicines. It is a shame that this government in negotiating this agreement has not done so for the Australian people—and I will get into that later. I agree with the Prime Minister that it is a no-brainer to want to ensure that Australian libraries and education institutions are able to afford materials free from the imposition of US copyright laws that are designed to increase profits for US businesses in the arena. It is a shame the Prime Minister has let us down on this key and fundamental right as well.

It is a no-brainer to want to ensure that future Australian governments can regulate key areas of the economy and society, including health, education, water, postal, energy and environmental services. Again, the Howard government has let down Australia’s national and public interest by ensuring in this agreement that future governments will not have the same capacity to regulate these essential public services as the current government has. The Greens believe that Australia needs to look again at our relationship with the United States and that this trade deal is an example of why we need to do that. We need to have a relationship with the United States that is based on mutual benefit and independence, instead of the craven ties fostered by this government that mean whatever the US government wants it gets. It is this sort of relationship with the United States that has led to Australia’s involvement in an illegal invasion of Iraq that has made us less safe as a result.

Yesterday on television the US ambassador confirmed the views of many Australians, saying that this US-Australia free trade agreement is payback for Australia’s involvement in the war on Iraq. The Australian people can say to this government, ‘Thank you for nothing.’ We have got caught up in the quagmire of the ongoing occupation in Iraq, increasing the likelihood of Australia being attacked by terrorists and, in return, the US Congress—maybe—is going to create greater corporate fleecing of Australian industry and society through this US-Australia free trade agreement. What a great deal for the Australian public! Well, the Greens do not think so. We will, both in the parliament and around the community, be talking with Australians about the detail that is in this trade agreement that has been tabled today. We will be talking about issues like the Pharmaceutical Benefits Scheme.

US Republican senators have been talking about these issues, saying that the US trade deal signed with Australia is the first step in a campaign to raise global pharmaceutical prices and that the cost of Australian drugs will be changed under this agreement. This is what Republican senators are telling the US congress: the US has won in this free trade agreement with Australia. The senators told their committee that the Australian deal was a breakthrough that began the process of getting other countries to bear a greater share of drug company research and development costs. The US believe that they have cracked the great protection our Pharmaceutical Benefits Scheme provides.

This is the opportunity for the Australian Senate to stand up and say, ‘We don’t want that Pharmaceutical Benefits Scheme to be undermined.’ The Greens will be doing so in the Senate, and we hope that those other
senators who have the opportunity to hear from the Australian public through the Senate inquiry about the detail of this agreement will join us in standing up for our Pharmaceutical Benefits Scheme, where this government has failed.

Question agreed to.

**TELSTRA (TRANSITION TO FULL PRIVATE OWNERSHIP) BILL 2003 [No. 2]**

**First Reading**

Bill received from the House of Representatives.

**Senator KEMP** (Victoria—Minister for the Arts and Sport) (5.12 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 KEMP** (Victoria—Minister for the Arts and Sport) (5.13 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—*

**TELSTRA (TRANSITION TO FULL PRIVATE OWNERSHIP) BILL 2003 [No. 2]**

The Telstra (Transition to Full Private Ownership) Bill 2003 [No. 2] amends the Telstra Corporation Act 1991 to repeal the provisions that require the Commonwealth to retain 50.1% of its equity in Telstra Corporation Limited. The bill includes provisions for a framework for future, regular and independent reviews of the adequacy of regional telecommunications services.

The bill also amends the Telecommunications Act 1997 to enable the Minister for Communications, Information Technology and the Arts and the Australian Communications Authority to establish administrative arrangements for the setting of a condition of licence on Telstra for the preparation of local presence plans.

The bill is identical to the bill of the same name that the House of Representatives passed on 21 August 2003 but the Senate failed to pass on 30 October 2003.

It has been longstanding Government policy that Telstra should be transferred to full private ownership, subject to an effective regulatory framework that protects consumers and promotes competition. The Government’s reform of the telecommunications sector has encouraged greater competition and given Australians access to a wide range of high quality, innovative, and low cost telecommunications services.

While the Government is moving to establish the legislation immediately, it has undertaken not to proceed with any further sale of Telstra until it is fully satisfied that arrangements are in place to deliver adequate telecommunications services to all Australians, including maintaining the improvements to existing services. The independent Regional Telecommunications Inquiry Report, released in 2002, found that the Government had addressed consumer concerns identified by the independent Telecommunications Services Inquiry conducted in 2000.

The bill provides for the timing of the sale to remain open. The Government, however, will be seeking to maximise the returns from the sale of its remaining holdings. The bill retains for the Commonwealth flexibility to develop detailed arrangements for the sale process, which will protect and maximise the Commonwealth’s interests. The provisions to facilitate the sale are broadly defined to allow not only conventional single tranche sales, but sales effected through a number of tranches, or the use of other market instruments, such as hybrid securities, and authorise any borrowings by Government arising from the sale of such securities.

The bill has also been developed in such a manner so that specific obligations that apply to Telstra as a result of its status as a Government Business Enterprise and a Commonwealth-controlled company can be removed as the Government divests its holdings in Telstra.
Changes in Telstra’s ownership status, however, will not affect the Government’s ability to protect the interests of consumers, competitors and the public generally. Consumer regulatory safeguards such as the universal service obligation, the customer service guarantee, price controls, network reliability framework, and the Telecommunications Industry Ombudsman, will be maintained into the future.

The bill will also provide additional safeguards for customers in regional Australia.

The first is the ability of the Minister for Communications, Information Technology and the Arts to impose a licence condition requiring Telstra to prepare and implement local presence plans, outlining proposed activities in regional Australia. A provision will be added to the Telecommunications Act to enable the Minister or the Australian Communications Authority to establish administrative arrangements for the implementation and monitoring of these plans. This responds to a recommendation in the Regional Telecommunications Inquiry report.

The bill also provides for establishment of a Regional Telecommunications Independent Review Committee to review telecommunications services in regional Australia within five years of the commencement of the bill.

The bill will provide for the Minister to establish a committee comprising a Chair and at least two other members, with experience or knowledge of matters affecting regional Australia or telecommunications. The Committee will conduct its reviews at intervals of no more than five years after the previous review. The Committee will review the adequacy of telecommunications services in regional, rural and remote Australia, and report its findings to the Minister.

The Government’s policy on foreign ownership of Telstra is unchanged. Telstra will continue to remain an Australian owned and controlled corporation. The maximum aggregate foreign ownership allowed in Telstra will remain at 35 per cent. The maximum individual foreign ownership will remain at 5 per cent.

The bill has been developed in such a manner so that various directions and reporting provisions associated with majority public ownership can be repealed as the Government proceeds with its divestment of Telstra. When the Government’s holdings have fallen below 50 per cent, various provisions relating to Telstra’s status as a Government Business Enterprise will be repealed. This includes, for example, the Minister’s directions power. When the Government’s holdings have fallen below 15 per cent, certain additional reporting requirements that apply to Telstra, because of its status as a Government Business Enterprise, will be repealed.

While the Government actively supports privatisation of Telstra and the need to continue to protect the rights of customers, it is also aware of the need to protect the rights of Telstra’s employees, and members of the community that have outstanding disputes with Telstra. The bill sets out transitional provisions that will:

- require Telstra to continue to deal with any requests under the Freedom of Information Act 1982 and related subordinate legislation for access to a document in the possession of Telstra that have not been finally disposed of when Telstra ceases to be Commonwealth controlled and preserve the rights of persons making such requests under the Administrative Appeals Tribunal Act 1975;
- enable the Commonwealth Ombudsman to continue to investigate any complaints in relation to action taken by Telstra that have not been finally disposed of when Telstra ceases to be Commonwealth controlled;
- preserve the operation, in respect of events occurring prior to Telstra ceasing to be Commonwealth controlled, of the Crimes (Superannuation Benefits) Act 1989 and Director of Public Prosecutions Act 1983;
- preserve the accrued long service leave benefits of Telstra employees earned under the Long Service Leave (Commonwealth Employees) Act 1976 and related subordinate legislation;
- preserve, for up to 12 months, the rights of female Telstra employees to access provisions under the Maternity Leave (Commonwealth Employees) Act 1973 and related subordinate legislation;
f. ensure that from the cessation of Commonwealth control, Telstra’s liability in respect of injuries suffered by employees prior to 1 July 1989 continues under section 128A of the Safety, Rehabilitation and Compensation Act 1988; and

g. remove Telstra from the operation of the Occupational Health and Safety (Commonwealth Employment) Act 1991 from the cessation of Commonwealth control.

To sum up, this legislation is part of a package that delivers on the Government’s election commitments to ensure that Australia’s telecommunications system combines the best elements of competition and customer service.

It also provides an opportunity for Australians to invest further in Telstra, and allows Government to focus on regulating the telecommunications industry.

It supports maintenance of service quality, and protection of existing consumer rights, regardless of Telstra’s ownership.

Debate (on motion by Senator Crossin) adjourned.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives agreeing to the amendment made by the Senate to the following bill:

Health Legislation Amendment (Medicare) Bill 2003

ASSENT

Messages from His Excellency the Administrator of the Commonwealth were reported, informing the Senate that he had assented to the following laws:

Norfolk Island Amendment Act 2004 (Act No. 6, 2004)


Aviation Transport Security Act 2004 (Act No. 8, 2004)


Workplace Relations Amendment (Improved Remedies for Unprotected Action) Act 2004 (Act No. 11, 2004)

Agricultural and Veterinary Chemicals (Administration) Amendment Act 2004 (Act No. 12, 2004)

Extension of Sunset of Parliamentary Joint Committee on Native Title Act 2004 (Act No. 13, 2004)


Industry Research and Development Amendment Act 2004 (Act No. 15, 2004)

MILITARY REHABILITATION AND COMPENSATION BILL 2003

MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2003

Report of Foreign Affairs, Defence and Trade Legislation Committee

Senator SANDY MACDONALD (New South Wales) (5.14 p.m.)—I present the report of the Foreign Affairs, Defence and Trade Legislation Committee on the provisions of the Military Rehabilitation and Compensation Bill 2003 and a related bill, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator SANDY MACDONALD—I move:

That the Senate take note of the report.
The Senate Foreign Affairs, Defence and Trade Legislation Committee presents its report on the Military Rehabilitation and Compensation Bill 2003 and the consequential legislation. The purpose of the bill is to establish a new military rehabilitation and compensation scheme, which will come into effect when the bill is promulgated, which we anticipate to be on 1 July 2004. That is why there was some urgency in the legislation committee examining the legislation. The new unified scheme will cover all forms of military service and all types of military personnel for service from the date of its enactment. It replaces two existing acts, although these will continue to apply with respect to service before 1 July 2004. The unified approach amalgamates the military and civilian aspects of earlier legislation in recognition of the fact that the boundary between military and civilian engagements has become increasingly blurred in the ADF’s recent deployments, a trend that is expected to continue.

The bill has a strong focus on rehabilitation. This is consistent with the arrangements in the broader community but a departure from traditional practice, where the emphasis has been on compensation rather than rehabilitation, reflecting attitudes at the time the earlier legislation was developed when rehabilitation was not considered an option for most claimants. In addition to improved provisions for rehabilitation, the bill expands the range and level of benefits available to those with a service related injury or disease and to the dependants of those killed in service. Their choice of benefits is also expanded, with financial advice available to assist people to make the most of the opportunities presented to them by these choices. The Department of Veterans’ Affairs and the Department of Defence held wide-ranging consultation during 2003 with organisations representing veterans and service members on an exposure draft of this bill. The legislation now before the parliament incorporates a number of changes suggested by these groups.

The Senate Foreign Affairs, Defence and Trade Legislation Committee held three public hearings during its inquiry into the bill—in Perth, in Melbourne and in Canberra—and received submissions from major veterans and service organisations. Support for this legislation was high, although not universal. Tellingly, support was strongest among the organisations representing serving members, the people who will be directly affected by this legislation. It was weakest among veterans organisations, whose members will continue to be covered by the existing legislation and will not be affected by the bill.

The submissions and public hearings revealed significant levels of misunderstanding of some of the concepts underlying the bill. This was not surprising given the complexity of the legislation. These misunderstandings have given rise to some concerns with certain aspects of the legislation, such as the actuarial basis of some of the compensation payments. The committee considered that with a fuller understanding of these concepts, many of the concerns expressed to the committee will be allayed. Indeed, during the course of the inquiry a number of misconceptions were clarified, and those are detailed in the report to the satisfaction of the ex-service organisations which raised them.

The bill provides equivalent or improved rehabilitation and compensation entitlements compared with the existing legislation. None of the bill’s provisions is less beneficial, and this was recognised in the evidence and accounts for the generally high level of support for the legislation. On that basis the committee recommends that the Senate pass this bill.

Finally, I would like to thank my colleagues, especially Senator Bishop, the
shadow spokesman for veterans’ affairs—his commitment and understanding of the legislation is to be commended—and the committee secretariat, especially Mary Lindsay, who produced the report and had to grasp the extremely complex nature of this legislation. It was difficult because of the existing compensation legislation, which is difficult to understand. I note the number of people in the veterans community who have a point of view on changes to the existing legislation and the new legislation, and the passion with which they take part in public debate on the terms and conditions of their compensation and rehabilitation aspects of their life. The veterans community are good citizens and this legislation will continue to do the right thing by them. I commend the report to the Senate.

Senator MARK BISHOP (Western Australia) (5.20 p.m.)—I am pleased to speak to the report on the Senate Foreign Affairs, Defence and Trade Legislation Committee. This report is a live demonstration of the value that scrutiny brings to public policy formulation in this country. This is particularly the case with these military compensation bills, which are very complex and go to the heart of compensation policy for serving ADF personnel and veterans of the future. These bills represent possibly the greatest reform in this area since World War I. I will deal in more detail with that context when the second reading debate on this bill resumes later this week.

Today I would like to speak on the central issue of the committee’s consideration—that is, the task of balancing a wide range of views within the veterans community. As mentioned in the report consultation, there was a major weakness in developing these bills. It needs to be understood that the ex-service community is indeed a very homogeneous community. There is a very strong bond between members of that community regardless of the time or place of their service. They have all served their country and they take at face value those reassurances given by politicians that in times of strife they will be looked after. Ex-service organisations are determined to hold all members of parliament to that particular pledge.

Part of that bond is to help one another, particularly in times of adversity; another is to safeguard the traditional value of recognition of service. It is perfectly natural, therefore, for the ex-service community to have a deep and vested interest in this legislation. It must be said that, in the main, these interests are protected in this legislation. There is a dilemma, however. Circumstances change, as do conditions of service and the nature of our defence policy and the nature of deployments made pursuant to that policy. Witness, for example, the increase in more recent years in the number of peacekeeping forces being deployed to parts of the world. Modern policy must reflect such shifts, so the traditions preserved have to be relevant to modern service.

I will now return to my first point, on consultation. As expected, involvement by way of putting in submissions and giving evidence at public hearings was dominated by veterans organisations. Some brought to bear on all of the issues a very strong traditional values approach. They focused centrally on the protection of the values attached to warlike service. It must be said, though, that those views were not dominant; they centred on the current generation of Vietnam veterans, whose service does have unique characteristics. Those characteristics could be said to distinguish their service from all other service since World War II. This simply reflects the nature of that service. Certainly it was more dangerous than anything that has followed since. Their views are very relevant and must be respected without question. Others, however, put a broader view which
represented more general experience within the services.

It must be said that the prism through which most views were formed was that of the Veterans’ Entitlement Act. Those expressing such views were more concerned with the operation of the Military Compensation Scheme—hence the committee’s concern at the level of consultation with current serving personnel. After all, it is only those personnel who are going to be affected by these bills. The dilemma of the committee was therefore the same as that of the framers of this legislation. The current schemes have very different origins, but the best features of both were melded in this new proposal. Of course, agreeing on what is best involves considering perspectives of the kind I have been discussing. We are dealing with perceptions of relevance which have their origins in different eras. Those perceptions are held by different generations with different experiences and were formed at different times in our history. Inevitably, there are some who believe the bills go too far in modernising the approach to compensation. Others believe that too much of the past has been translated across. Thus, there were some very divergent views to be weighed by the committee.

Many issues, as the report accurately acknowledges, reflect concerns about a number of changes that appear to be making things tougher. For example, there is a more rigorous approach to the consideration of the consumption of alcohol, tobacco and drugs as causative of injury and disease. Injury resulting from disciplinary breaches and concealment of injury are also dealt with much more rigorously. Beyond that level of concern, however, a number of issues were examined in greater detail. These centred on that basic conflict about the traditional values attached to qualifying service. This policy had its roots in World War I and continued for World War II, Korea and Vietnam. It reflected the public commitment to provide special care for those who were prepared to put their lives at risk. Its modern equivalent, warlike service, has been declared by the current government for many deployments. I will not go into the arguments of relativity here. Suffice to say there has been considerable dilution of the standards attached to qualifying service in recent years. The main cause of this, it must be candidly admitted, is political pressure.

Further, remuneration provided is of a more generous standard than has been the case in past years. This is clearly based on a policy of the current government that it is preferable to reward risk through allowances up front than through differentials in compensation. However, this policy is not well articulated and is clearly not fully accepted by the veteran community. In fact, it could be said the policy is in a slow transition. Two key examples put to the committee illustrate this transition. One is the differential proposed in these bills for different lump sums to be paid to the widows of those killed in peacetime and in warlike service. The proposed differential is $60,000. The committee was persuaded by the majority view of ex-service organisations that this differential should be removed. The prime reason for this is that it is not considered possible to distinguish between the grief suffered by the loved ones of those killed in peacetime and those killed in warlike service. Another issue is the differential applied to impairment payments made for injury incurred during peacetime and while on warlike service. Here, the only beneficiary is the one injured. Respecting the view of those keen to retain the status of warlike service, the committee have not recommended any change. Thus, with reference to the dilemma, the committee have reached a balanced view. We support that approach.
Finally, the committee considered the matter of administrative review. Once again, two paths were proposed—depending on whether or not a compensation claimant had warlike service. The background to this is more confused. In the past, those with eligibility under the Veterans’ Entitlement Act—which included those with peacetime service—could appeal to the Veterans’ Review Board as well as to the AAT simply as a matter of efficiency, equity and streamlining. These issues were, however, fully addressed in November last year by the Senate Finance and Public Administration Legislation Committee.

I will close my remarks on one point. This has been a worthwhile exercise, and public policy is much better off for the exercise. All ADF personnel and veterans can have a better sense that these issues have been fully canvassed. Not all will totally agree with the outcome, but that is a burden we as legislators carry. Good policy should always be the goal, but compromises are necessary when the climate is not right. That is called democracy, and this is democracy at work. My thanks go to the secretariat, who prepared a report which accurately reflects the evidence in a very difficult and somewhat arcane area of law. I will continue my remarks on the bills in more detail when the debate on the second reading resumes.

Question agreed to.

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002 [No. 2]

Second Reading

Debate resumed.

Senator FORSHAW (New South Wales) (5.30 p.m.)—Before debate on the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2] was adjourned prior to question time, I had made mention of the fact that the government was relying on the corporations power of the Constitution rather than on the specific head of power—namely, the power for the prevention and settlement of industrial disputes. As I said, this legislation does not achieve—or does not even really attempt to achieve—the objectives that the government claims for it in the minister’s second reading speech on the bill. What the government is doing is simply riding roughshod over the rights of the states when it comes to the regulation of industrial relations issues within the states.

We have had a dual system of industrial relations regulation in this country, as I said, since at least 1904. One of the great features of our industrial relations system, at both the federal and the state levels, is the respect for the role of the industrial commissions in conciliating and arbitrating on industrial issues, resolving problems at the workplace through a cooperative approach. But, where there is a need for the umpire to make a decision, the system has provided for that through arbitration. That principle has been followed by governments of all persuasions right through until, frankly, the election of the coalition government in 1996. As one who has had a long history of involvement in industrial relations issues prior to coming into this parliament, I have to say that even the Fraser government never went as far as this government has gone in trying to reduce the rights and entitlements of employees. Ministers such as Ian Viner and Ian McPhee, despite the fact that they certainly came from a conservative background that was critical of the role of trade unions in the industrial relations scene, respected that employees had rights, that unions had rights and that the commissions had the responsibility, ultimately, for resolving industrial relations issues. The government did not seek to impose itself constantly on the outcomes of the proper bargaining processes between workers and their employers.
But since Mr Howard became Prime Minister that has all changed. As I recall from his years in opposition, Mr Howard himself always had this reformist zeal to change the industrial relations system in this country and to change it forever to his way of thinking. That is what he set out to do and, as I said, that is why we have seen at least 50 pieces of industrial relations legislation brought before this parliament in the last seven or eight years. Many of them—indeed, most of them—were nothing more than attacks upon workers, trade unions and the industrial relations commissions, seeking to remove that important principle of independence. That is what is happening here. The government is taking away by legislation a right that the state commissions have had for many, many years. It is hypocritical for the government to claim that this will create harmony and a simpler system. Indeed, it will be more complex.

Let me paint a picture. This bill, if passed, will mean that state jurisdictions—state industrial commissions, such as the New South Wales Industrial Relations Commission—will no longer be able to hear claims for unfair dismissal by employees of corporations in that state. If those employees are covered by a state award of the industrial relations commission, all of their wages and working conditions will continue to be regulated by the state industrial relations commission except for that area of unfair dismissal. You could have a situation, for instance, where there may be negotiations between a corporation and its employees, represented by a union or maybe not represented by a union. They are going through the negotiating process. Let us say there is a dispute, and let us posit—it is more than a possibility; I have seen it happen many times—that an employee or employees are dismissed. Suddenly the state industrial relations commission has no role. It then transfers automatically to the federal commission—notwithstanding that it may have been that the New South Wales Industrial Relations Commission was overseeing the negotiations and the whole process leading up to that dismissal. That is just one example; I can think of many, many situations where it will be far more complex.

It cannot be argued that taking one element out of the employment contract—the element of unfair dismissal, which is effectively the termination of the contract—and out of the realm of the jurisdiction of the state commission, transferring it to the federal commission and leaving everything else under the auspices of the state commission is creating a simpler system. It is more complex.

The second reading speech sets out the government’s real agenda. It says:
The Federal unfair dismissal law is generally less burdensome to employers and less destructive of employment growth than the State laws.
That is code for saying that it is easier to sack people under the federal unfair dismissal laws than it is under the state laws. I have always found it ironic that a government that wants to promote employment growth believes that the way you create it is by making it easier for employers to dismiss people. That is just total idiocy when considered as a proposition. It is simply illogical.
The data shows that the highest level of employment growth in this country during the Keating and Hawke years in the various sectors of employment was in the small business sector. Throughout the whole period of the unfair dismissal laws regime that this coalition says was an impediment to employment growth, growth in small business employment was substantial. It was trending upwards all the time whilst employment in areas such as the public sector and large businesses was trending the other way. So the
unfair dismissal laws were never really an impediment to employment growth.

The second reading speech also states:

Even if this were not the case, it is self evident there would be advantages in having to deal with only one set of laws rather than several.

As I pointed out, that objective will not be achieved. Employees who are currently employed by corporations and regulated by state industrial awards or agreements have a simple system at the moment. They have one jurisdiction looking after all of their employment contract related issues. This proposal creates a situation where they will have two jurisdictions. That does not sound more simple; that sounds more complex.

I point to one other hypocrisy that is evident in the bill—that is, the draconian way in which it is being done. This legislation, if it is passed, at the stroke of a pen will remove the unfair dismissal laws from the state jurisdictions. Whatever happened to that great principle of choice that we are lectured about every day of the week by this government: there has to be choice in industrial relations; employees and employers have to have the opportunity to make choices—choices about whether they want an award, an industrial agreement or an AWA; choices about whether they want to be represented by a union or not represented by a union?

One of the choices that have existed throughout our history is the choice available to employers and employees to determine which area of industrial regulation they prefer. It is quite open for employers to seek to have their employees covered by the federal commission or the state commission. There is effectively no impediment that prevents an employer in just about every business in this country, except for certain categories of employees, from seeking to be covered by the federal jurisdiction. Similarly, they can be covered by the state jurisdiction. The way our law is structured is, if they are not covered by a federal award or agreement, they are effectively covered by the state award system by virtue of common rule regulation.

There are plenty of choices available but there is no choice in this legislation. There is no choice for the employee to be able to go to the commission that he has relied upon for regulating all of his other terms and conditions of employment to seek redress for an unfair dismissal. That will be removed totally if this bill is passed. Let us not have any more of these lectures from this government about the fundamental importance of the principle of choice because, when it comes to the area of unfair dismissal, there is no choice for the employee; there is really no choice for the employer either. If you are a corporation or small business incorporated in New South Wales or in the states covered by the state jurisdiction and the bill is passed, you will lose your choice as to what jurisdiction you wish to be covered under. I am not opposed to national uniformity but it should be brought about by cooperation, not coercion. (Time expired)

Senator HUTCHINS (New South Wales) (5.42 p.m.)—It is with pleasure that I follow my colleague and fellow New South Wales senator Michael Forshaw in today’s debate. This is the second occasion we have debated the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2]. I hope it goes the same way it did on the last two occasions—to the dustbin. Senator Forshaw articulated quite clearly and comprehensively that the reason this bill must be defeated is that, if it were carried into law, the state tribunal would set the day-to-day employment obligations of people, say, in my state yet the federal system would be used for unfair dismissals for these same people.
There are significant differences between the approach of the New South Wales legislation and the approach of the federal legislation. The most obvious is that one was drawn up by a progressive government; the other was drawn up by a regressive government. Nevertheless, the first difference is that within the New South Wales jurisdiction, which covers about 70 per cent of employees in New South Wales, there is the provision for statewide award settlements. That is not the case in the federal jurisdiction at all. These settlements can either be reached by agreement or be arbitrated. Currently there are a number of wage negotiations going on in the state of New South Wales to that effect. The second difference is that to be covered by the proposed federal legislation as a casual worker you would have to have been a casual for 12 months, rather than the six months required in the New South Wales jurisdiction. I will speak about casuals a little later in my contribution because that is something that we as a community need to start thinking about more seriously.

The third difference between the New South Wales and the proposed federal legislation is what are called deemed employees. Under the New South Wales act there are certain groups of people who are deemed employees. The most outstanding, of course, are clothing outworkers, cleaners and building tradesmen. They are deemed employees because of the category of work that they conduct on behalf of their employers and the particular employment relationship they have with their employers. Probably the most exploited, underpaid and mistreated people in the working community are outworkers, an overwhelmingly large majority of whom are from non-English-speaking backgrounds. They are mainly from Asia and are mainly women.

The New South Wales jurisdiction has sought to deal with the difficulties of these workers by allowing them access to New South Wales tribunals, but nowhere in the proposed federal legislation is there any reference to this group or class of workers. In particular, the issue of clothing outworkers deserves the attention from the federal government that it has received in the state of New South Wales. As I say, under the New South Wales act, outworkers, cleaners and building tradespersons are deemed employees because of the nature of the employment relationship they have with their employer. The fourth difference is with respect to injured workers seeking to return to work. I am not aware whether there is any provision for injured workers in the proposed legislation before us this afternoon.

Let me reiterate those four points of difference with the New South Wales legislation: the provision for award settlements; that casuals are able to be reinstated after six months employment, not 12 months; that employees are deemed to be employees if they are outworkers, tradespersons and cleaners; and the particular category of employee concerning injured workers.

Another difference that I am probably more familiar with, and which seldom gets mentioned by the government or speakers in this debate, although I have mentioned it before, is the other category of worker in the New South Wales jurisdiction that is not referred to here and the ability in that jurisdiction to deal with that category of worker—I say 'category of worker'; lawyers might use a different term. I am referring to lorry owner-drivers—and Senator Ferris would be aware of this issue—or, as they are called in the New South Wales legislation, contract carriers. Those people, and they are predominantly men, have had the ability for nearly 25 years under the jurisdiction in New South Wales to be reinstated if they were wrongfully dismissed by their employer.
This group of employees is required by their employer—the 'principal contractor' as that person is referred to in the New South Wales legislation—to have a particular type, design and weight of vehicle. That vehicle has to be painted in company colours. That person has to be contracted by one company for whom their vehicle is painted. They are subject to the control and direction of the principal contractor and they can be, and have been, dismissed for any misdemeanour.

Throughout the history of dealing with this matter in New South Wales there has been a bipartisan approach by the major parties in reforming the legislation to allow for this category of worker to be able to seek redress and justice if that is required. As I said, these men are required to paint their vehicles in particular colours. You have all seen them on the road—concrete trucks with Boral or Hymix painted on them and vehicles with TNT, Mayne Nickless, Toll or other major contractors’ names painted on them. For all intents and purposes, you and I would not know the class of work that that person is contracted for by their principal contractor unless we asked them. They wear the uniform of the major company, their vehicle is painted in the major company’s colours and they are also subject to the direction and control of the major company.

In chapter 6 of the New South Wales industrial relations legislation there has been for some time the provision for lorry owner-drivers or contract carriers to go to the New South Wales commission and seek to be reinstated if they believe that they have been unfairly dismissed. On a number of occasions in my previous occupation I went before those tribunals and argued on behalf of those people. Sometimes they were reinstated because they had been unfairly dismissed and sometimes they were not, because the judge made the decision that they had been dealt with properly. In the New South Wales jurisdiction there is the ability to have this particular class or classification of worker dealt with on the issue of unfair dismissal. But it even goes further than that—under chapter 6 of the New South Wales legislation, this class of worker can go before the New South Wales Industrial Relations Commission and argue the case of unfair contracts. The worker has that recourse to a commission, which is not available to any other group of person in this category throughout the country as far as I am aware.

There are some glaring holes in this legislation. When people refer to termination of employment, they want consistency between federal and state jurisdictions, particularly my state of New South Wales. The ability of lorry owner-drivers or contract carriers to be reinstated and to have their contracts dealt with by a commission has been part of the New South Wales structure for nearly half a century and has been the subject of consensus amongst the major parties. In fact, it was only a few years ago, when there were disputes concerning the payment of goodwill, that legislation was introduced to the New South Wales parliament by the member for Auburn, Peter Nagle. The legislation was passed and allowed lorry owner-drivers to argue their cases for goodwill before Industrial Relations Commission judges in a tribunal set up by the New South Wales parliament. Once again that was as a result of consensus between the major parties. This was not a contest between the Labor and Liberal parties; this was seen to be good public policy, and legislation was passed with goodwill from both conservative and Labor members of parliament. So there are two classes of workers that are not covered by either the New South Wales act or the proposed federal legislation. These are outworkers—probably the most mistreated, abused and exploited group of workers in the community—and lorry owner-drivers, who have been dealt
with for over half a century under the juris-
diction of New South Wales.

I now want to come back to the issue that
concerns casual workers. Senators would be
aware the Senate Community Affairs Refer-
ences Committee has just completed an in-
quiry into poverty and financial hardship.
During that inquiry we had a significant
number of submissions from men and
women throughout the country who are cas-
ual employees. These are people who want to
be permanently employed; they desperately
want the opportunity to have a full-time
permanent job, but it is not available to them.
During the past 20 years the percentage of
casual employees in the work force has in-
creased from 12 per cent to 28 per cent. The
rise has been more rapid in the last decade.
People no longer have the opportunity for
permanency that you and I, Mr Acting Dep-
uty President Cherry, would have taken as a
right when we were young men.

I want to take the chamber’s time briefly
to relate to senators what men and women
around the country are experiencing. These
people told their stories to the inquiry as it
travelled around the nation. On 26 May in
Sydney, Mr Leeman gave evidence to the
inquiry. I will read out excerpts of this so
that you can get an idea of what working life
is like for people who do not have a
strong bargaining position. Mr Leeman
said:

I would like to start by briefly explaining a bit
of my work history and then go through some of
the issues that have come up over a period of
time. I have worked for about four different la-
bour hire companies and I have signed up to 12
over that period as well. With those four I have
worked at six different workplaces over the last
five years, and I have also had a couple of perma-
nent jobs during that time as well. The things that
I have been concerned about during that time as a
labour hire employee are issues of occupational
health and safety, of being able to know what my
rights are as an employee—particularly I could
not even get hold of the award that I am covered
by—and also the quality of work, and obviously
that leads to the quality of life as well: not having
much control over the hours that I work and being
forced to work a lot harder than I normally would
because one is not quite sure when the work is
going to come again.

He went on to say:

It is very hard to get information on what rates
of pay we should be receiving and what loading
and that sort of thing. When I was working at
BHP for Skilled Engineering we were required to
fill in our own time sheets. Unless you actually
knew what rates of pay you should be receiving at
different times of the day, over the weekend,
award rates and so on—the different loadings—
you did not receive them. There were a number of
employees who did miss out because they did not
know what those things were. It was very much
up to each individual to go and get that informa-
ton.

That is part of what Mr Leeman told the
committee. I would now like to read out
what Mr Spencer said when he appeared be-
fore the committee in Adelaide on 29 April
last year. Mr Spencer said:

I am 54 years of age. I am a cleaner and an
LHMU member. Until recently I worked at the
Myer Centre. I had worked there for 10 years,
through three different employers as the contracts
kept on changing. About six weeks ago I was
made redundant. I was one of 15 people who
were retrenched when the contract changed.
Twelve of us were over 40. We were cleaners
with lots of experience. As a result of losing the
job and of having three different employers over
the 10 years that I worked on the one site, I have
no long service leave, because each employer has
committed it, but the long service leave is not
portable. It makes life really difficult.

Around Australia the inquiry heard similar
tales from men and women who are what we
now call the working poor. These people are the ones that we should be paying attention to. We should try not to deprive them of the few rights that they already have.

Mr Spencer has had three different employers in 10 years and he is over 40 years of age—that is the changing face of Australia’s work force. As I said, 20 years ago about 12 per cent of the work force was casual and now it is 28 per cent. We have this scourge of labour hire agencies out there that provide people with no permanency whatsoever. God knows what is going to happen if this legislation is carried. Workers will have to be with their employers for 12 months before they have any rights. As Mr Leeman said, he has worked for a variety of labour hire agencies over a five-year period, but he will never actually qualify for benefits under this legislation, if it passes the 12-month rule, because he does not have one permanent employer. Mr Leeman and Mr Spencer are not working as accountants or in the finance or banking sectors. They are doing the jobs at the low end of the work spectrum—generally the low-skilled and low-paid jobs. I am very concerned about what has come out of the inquiry into poverty and financial hardship that you, Madam Acting Deputy President Knowles, and I have sat on over the last 12 months.

In summation, I cannot see any obvious practical reason why you would change the legislation as it stands in the various states. I have spoken to a number of employers on this issue, and they believe that there is no benefit in them being burdened with some cumbersome federal system when there is a workable and proper state system already in place. It has been proven that in a number of areas in New South Wales the legislation to look after classes of workers or employees has been changed with the consensus of the major parties. It has not been seen as an opportunity to play some sort of political game with people’s lives. It has been done because it was sound, practical policy and because it was effective for those men and women and their employers in the areas in which they worked.

I have highlighted the significant differences between the New South Wales and federal legislation. I come back to the point that Senator Forshaw ended on: if this legislation is carried, an employee who claims unfair dismissal will be going down to William Street in Sydney to the federal commission but their terms and conditions and employment obligations will be set by another jurisdiction altogether. If that is the case, it is only commonsense to make sure that people are in one area together.

I mentioned earlier that I was concerned about the working poor. This is an opportunity to highlight to the Senate how that situation affects them. It would appear to me that, with the growth of casual employment in this country, particularly over the last 10 years, these men and women are missing out on the so-called economic miracle that we may be experiencing. These are the men and women who are getting the pointy end of the pineapple. They are really finding it tough, Madam Acting Deputy President, as you will recall from the evidence the committee heard throughout the country. These men and women told us how difficult it was for them to make ends meet. Let us not deprive them of any more rights than those we have already deprived them of by casualising the work force.

Senator LUDWIG (Queensland) (6.02 p.m.)—I rise to speak on the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2]. The bill was introduced into the House of Representatives on 6 November 2003. It is identical to the Workplace Relations Amendment (Termination of Employment) Bill 2002, which was
defeated in this house. The current bill is another piecemeal approach to industrial relations. The government seem to be wedded to having a piecemeal approach to industrial relations.

I have said before in this chamber that this has been a golden opportunity for the government to talk to people about industrial relations and about any effective changes that they require. But the government seem quite unable not only to talk to but also to consult the states, employers, employees and unions about how to change the industrial relations system to one that might be fairer all round. What the government tend to do is try to divide people. They tend to be divisive, to be negative and to carp. Although they accuse us of that, I think the Liberal Party, along with the National Party, take a pre-eminent position in being the carpers on industrial relations.

The government fail to appreciate that industrial relations is about people. It is about people’s lives, it is about their livelihoods and it is about their spending eight, nine or 10 hours—sometimes truck drivers spend 12 or more hours—a day performing for reward. In some instances that reward is not very much. In some instances workers are well rewarded. But the government fail to understand that there is a continuum of workers in both the state system and the federal system of industrial relations who have expectations about entitlements and conditions from that system.

The government seem to be hell-bent on creating a divide. In this legislation the government have chosen to introduce a number of changes, which I will go to later. Standing on their own, none are beneficial. It is not beneficial legislation that the government are trying to implement; it is negative legislation. It is legislation designed to reduce people’s entitlements or to otherwise deal with them negatively. It is not legislation that seeks to achieve the removal of the mischief. There is no underlying causal problem that this legislation seeks to remedy. So this legislation is not trying to remedy a fault that has been discovered in the system. The government are not trying to say in this legislation: ‘We’ve discovered a huge problem. This is the reason for the problem; therefore, we need to fix the problem.’ This piece of legislation not only takes away people’s rights but remedies mischiefs that do not exist.

I can think of only two reasons for this bill. Either it has been introduced with a view to creating another double dissolution trigger on unfair dismissal laws or Mr Andrews has got his riding instructions from the Prime Minister to pursue it again. It is quite surprising that Mr Andrews, whom I would have put a little bit ahead of Mr Abbott and even Mr Reith on industrial relations, appears to be simply following their agenda—the one that was set by Peter Reith. I can understand that. Mr Reith was a true zealot in reforming industrial relations, in his view, but it was in a negative way. He was dedicated to the cause. Mr Abbott was perhaps not so dedicated. He has now moved to health, and the government have left Mr Andrews with this portfolio. Rather than take a backward step to assess and look at what he can do in industrial relations, Mr Andrews has simply fallen into someone else’s shoes—not into Mr Abbott’s shoes but into those of Mr Reith. He is carrying the torch on behalf of all of those associations that would destroy an industrial relations system and allow a free market to exist. He would rather do that than step back and look at what he can do in industrial relations, Mr Andrews has simply fallen into someone else’s shoes—not into Mr Abbott’s shoes but into those of Mr Reith. He is carrying the torch on behalf of all of those associations that would destroy an industrial relations system and allow a free market to exist. He would rather do that than step back and look at the industrial relations system and talk to the shadow minister about ways of improving it.

This bill is typical of the 10 or so bills that have been pushed up to the Senate from the House of Representatives and reflect the
same agenda. I do not think it is the agenda of Mr Andrews. I do not think he would truly agree with some of the things he expects us to agree to. The bill aims to expand the unfair dismissals jurisdiction of the Australian Industrial Relations Commission to all constitutional corporations, excluding people who work for partnerships and sole traders, who would remain under state laws. This would result in the Commonwealth taking over 85 per cent of state unfair dismissal systems. It is not 100 per cent—there is still a gap—so why would you do that? If you cannot negotiate with the states to have a single, unified system—whether the minister has even tried to do so is a moot point—why would you move to take over part of a system when the rest of the system will continue to exist? You would have a dual system.

The government have created another problem in the system. Employees will be unsure of whether they were employed by a corporation, an association, a partnership or a sole trader. Many employees will be concerned about which legislation covered their rights and where they should lodge their complaints. They could lose rights by lodging a complaint in the wrong tribunal, only to discover later that it should have been lodged somewhere else. They would then have to do a paper shuffle to ensure that their rights were still protected. This has all been brought about to remedy a mischief or a problem that does not exist. It cannot be beneficial legislation if it creates this type of outcome.

The bill also proposes to change the processing of unfair dismissal claims and to alter eligibility and available remedies, especially for small business. The bill will effectively create a new class, a ‘small business class’. The Industrial Relations Commission will have a separate tier of dismissal legislation that will affect not all but some. You can see where we are heading with this. Clearly, the coalition believe in a divided, class based system. They are trying to rediscover their old habits.

The government claim that the bill makes a constructive move towards a unified and simplified system of workplace relations regulation, but they have not been able to demonstrate that here. It really is a grab for power, coupled with a reduction in workers’ protection and rights. In simple terms, the purpose of this bill is to extend federal unfair dismissal coverage from four million workers to about seven million; however, in so doing, it displaces the present state jurisdiction for unfair dismissals for incorporated entities. The bill introduces different criteria and consequential compensation provisions for the Australian Industrial Relations Commission to apply in those circumstances. In making the shift away from state coverage, it will reduce that protection and the rights of those employees.

It also extends the qualifying period of employment for small business employees. It creates a second tier for small business employees. As if these lofty gains are not enough, the bill will also do a few more things. At present, the AIRC has coverage of unfair dismissals for employees who work in a corporation under a federal award. It also has coverage for groups such as Commonwealth employees, waterside workers and Victorian and Territory workers. This bill would remove the requirement for a person working for a corporation to also be a federal award employee. The deletion of the federal award criterion would mean that all state award employees who work in corporations would be covered by the Workplace Relations Act’s unfair dismissal provisions.

The bill does more than simply remove that; it attempts to prevent unfair dismissal applications arising where the termination was made for operational reasons. That is
generally regarded as a redundancy situation. It would create an incomplete, lesser system. The bill seeks to limit compensation payable by all businesses by having the commission consider any contributory conduct of the employee, for instance the earnings whilst in other employment of the employee who is to be reinstated. On the face of it, the proposal may lead you to believe it is about establishing a system of reinstatement jurisdiction which the government is trying to categorise as one step in the right direction. I think it is a backward step. What the government should do is examine the Sweeney report and the Hancock report and perhaps then go to the heads of industrial relations in the various states and examine some of those issues if it wants to provide a seamless rather than a uniform system.

There are many other ways of achieving world’s best practice, or even Australian best practice or states’ best practice, rather than adopting this model the Commonwealth now propose. In truth, they are offering a milksop to small business by saying, ‘We’ll push for change here.’ They are offering a milksop to corporations by saying, ‘We’ll water down the unfair dismissal provisions and allow you to have a little more ease in dismissing employees.’ I do not think that washes with the Australian population at all.

According to the explanatory memorandum, this bill would result in the Australian Industrial Relations Commission annual unfair dismissals caseload increasing from around 8,000 cases to 14,000 cases. The Howard government could use that to appoint more commissioners to the Australian Industrial Relations Commission. This would not be an appropriate way to do it. Given the highly biased nature of appointments to the commission by this government, that alone is enough to say: ‘Stop! Oppose this bill.’ However, a complete scheme has not been proposed in this arena in any event. What we have is the divide between incorporated entities and unincorporated entities and partnerships and sole traders, who would not be covered. That is the latter group. You would then have a federal award system which covered federal award employees but only to the extent of termination. So not only is it split into two streams but you also have the divide that exists with small business.

It appears then that the bill fails the test of a move towards uniformity, in any event. Without cooperation on behalf of the states, it would appear that this attempt is going to fail, but a lot depends on the Democrats’ position and on the government’s position on this bill. Those matters in themselves are enough to oppose the bill. It is apparent that it is better in most instances to discuss and consult with the states and come to an agreement, rather than trying to force a poor uniform system of industrial relations on the states. The system is only part uniform. It is not complete and it is piecemeal rather than uniform. In truth it has the potential to reduce termination laws to the lowest common denominator.

The provision in respect of small business is particularly harsh on small business employees, not that this government seems to care. The provision defines a small business as an employer of fewer than 20 people, including the employee who was terminated and any long-term casuals. Bear in mind the difficulties in trying to define some of those terms. Some people manage their business to try to reduce the number of employees to fall within the definition of an employer of fewer than 20 employees. One problem is that when employers try to do that they remove or exclude long-term casuals. You have another group of small business people who say, ‘Irrespective of the number, I need so many people to run a business.’ If that happens to be 21 rather than 20, they employ 21. Therefore, they are excluded from the legis-
lation. It seems to be a very false way of trying to establish a divide to allow businesses to operate with certainty. At any stage during the growth period they could fall outside the legislation or, at least, into another category.

This type of arbitrary mechanism is unworkable. The government seem to be stuck on these types of unworkable provisions. In truth, I do not think they want the legislation to pass in any event. That is why they keep serving it up in this form rather than trying to reform the system, and sit down and talk meaningfully with people to work out workable solutions. It is the same legislation, being served up again, that Peter Reith served up as a zealot when trying to destroy the industrial relations system. It also creates another artificial divide in compensation to employees who have been unfairly dismissed—three months for businesses with more than 20 employees but six months for other businesses. There is very little justification for having these divides. You then start to have a ‘creeping divide’, if you want to come up with a new term. The government are forever trying to work out one position for one group and another position for another group. They do it by halving the entitlements you might otherwise be able to get in the dismissal or reinstatement jurisdiction—three months for small businesses with fewer than 20 employees and six months for other businesses.

One thing that always amazes me is that, no matter how much you try to direct here, there has to be a case in the Industrial Relations Commission. An employee on their own or represented by a solicitor, a union or another advocate has to be able to run the case, fight the case and win the case before an industrial relations commissioner, who is experienced in these areas and able to bring their own experience to bear in deciding these matters. Put in that context, it is far preferable to leave as much latitude to the parties to negotiate and come to a settlement and avoid the commission, if possible. That is a far cheaper option, I can tell you from experience. If you are going to run a case, it is far better to let the commission—an independent tribunal—determine all the facts and come to a solution based on the evidence put before it, rather than to use the Workplace Relations Act not as a framework to set up a tribunal to allow it to deal with these issues but to try to tinker.

That is what I think the government is doing with this legislation. It is trying to tinker in the Industrial Relations Commission by trying to narrow definitions. It gets itself in a terrible bind. You get inconsistencies; you get strange outcomes; you get strange clauses being proffered with serious consideration by the government, but they are not serious clauses and they do not deserve serious comment.

The legislation seems to introduce a contributory requirement. This means that the amount of compensation should be reduced if the commission is satisfied that the employee’s conduct contributed to the employer’s decision to terminate the employee. As I indicated earlier, during the course of a hearing or a settlement, a lot of those issues are taken into consideration, maybe not explicitly but certainly implicitly, as to how these matters are dealt with. You do not require provisions which direct the parties to do what they generally do in any event. Of course, the difficulty is that, when you have provisions that provide that sort of direction, it is a small hurdle—in some cases, a large hurdle—for the commission, the parties or other participants in the system, to try to leap over. Occasionally, people trip over those hurdles with unfair results.

This means that overall the government is about lowering the level of entitlements to employees generally. It has done that since.
Peter Reith’s day, then in Mr Abbott’s day and now in Mr Andrews’s day, by trying to serve up legislation that is not beneficial and has no mischief to overcome. Labor has agreed that, if there is a true mischief that requires to be overcome and it can be made out, then Labor will support industrial relations legislation. What this government has tried to do becomes quite stark when it comes to the big end of town. Look at the corporate sector and ask: has the government’s response to industrial relations been consistent with the response to corporate greed in the big end of town and business? The answer is simply no. We do not see a plethora of bills being served up in the Senate in relation to the big end of town. We have had a number of CLERPs, up to nine—perhaps nine is the exception, but I will wait—that up until now have not addressed the big end of town in any real sense in comparison with what Mr Andrews, Mr Abbott and Mr Reith have done in relation to workplace relations. The use of these laws can be summarised in three ways: they weaken protection for workers; they are an attempt by the Howard government to take over state unfair dismissal systems against the will of the states, unfairly and without justification; and they are absent of a cooperative approach, resulting in a substantial sector of the workforce remaining in state systems anyway. These concerns remain.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.22 p.m.)—I want to speak briefly on the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2], which is now before us for the second time. If the bill is rejected, as it was in August last year, it will be added to the pile of double dissolution triggers. It is probably no coincidence that half of those triggers are bills that relate in some form to workplace relations matters. The workplace relations area is probably the last remaining ideological battleground between Labor and Liberal. I sometimes wonder if we should give it heritage status, because they seem to have rolled out the same arguments year after year, pretty much stretching back over many decades. Therefore, in industrial relations matters it pretty much falls to the Democrats to try to cut through the various bits of historical ideological posturing to get to the reality that lies beneath the various proposals.

Many of the criticisms put forward by speakers such as Senator Ludwig are quite valid. It is for that reason that the Democrats do not support the legislation as it stands, just as we did not in August last year. As occurred last year, we will put forward a large number of amendments, and I draw the attention of the Senate to the revised sheets of amendments on behalf of my colleague Senator Murray. There are about 33 amendments in total, and they will dramatically alter the legislation and address many of the flaws contained within it. It is worth noting that under Minister Andrews, the new minister, there appears to have been some willingness to at least consider addressing some of the significant problems in the legislation as it stands, but I understand there is not a willingness to address all of them.

I want to cut through the various viewpoints on this legislation to put the Democrats’ position clearly. Ours has been a consistent position since the legislation was first proposed and investigated extensively by a Senate committee around the middle of 2003—that is, as a general position the Democrats are attracted to having a single, national approach in a whole range of areas, not least of which is industrial relations. We believe that, if we could get a single, national system of industrial relations, it would be far better than having six or seven different systems around the country, all having variations. For that reason, any effort to standard-
ise or develop a uniform approach is something we are attracted to.

Balanced against that is the fact that we are not interested in adopting legislation that will mean a net loss of the existing rights of employees. There is no doubt that the legislation as it stands would mean a net loss in the rights of many employees. The Democrats have sought repeatedly, including in amendments moved last year during the debate on the first version of this legislation, to ensure that, overall, most workers would not be worse off and that a significant number would actually end up having increased rights. That is the scope we have been looking at. An area that continues to be a sticking point is the probationary period for casuals, which is currently 12 months under federal legislation but six months or lower for many people under state legislation. There is also the issue of the definition of exactly what constitutes an employee under federal legislation and whether people might miss out if they were shifted across to the federal jurisdiction.

So it needs to be said quite clearly that many of the concerns, quite rightly put forward by other speakers, relate to the bill as it stands, not to the bill as it would be amended if the Democrat amendments were passed. The Democrats are attracted to the idea of a single system, but not at the expense of an overall increase in the number of workers who would have a reduction in their entitlements from those that exist at the moment.

It has to be said that this legislation would not establish a single, uniform approach. It would dramatically increase the number of people who are under a single, national system, estimated at up to 85 per cent of workers in relation to the unfair dismissal jurisdiction. There is no doubt that it would be preferable to move to a single, uniform system via negotiations with the states, whether for unfair dismissals or for anything else. The fact is that that will not happen. It certainly will not happen at the moment and I cannot see it happening. Even if we were to have a Labor government at the federal level to go with all the state and territory Labor governments, I still would be extremely surprised if there were a willingness to develop a single, uniform approach. The various interests of the different state jurisdictions are such that I find it very difficult to see that happening.

It seems to me that the only way we are likely to get a significant move forward to a single, uniform system is through a number of jumps, and this would be a significant jump. But, as I said, that should not be at the cost of an overall reduction in entitlements or a lowest common denominator approach. That concern was expressed by a number of speakers from the Labor Party, and I share that concern. That is why the Democrats will not support legislation that would allow a lowest common denominator approach to be adopted by the government. We will proceed with our amendments in the committee stage of the legislation and see how they fare. We will make a final decision, as we did in August last year, as to whether the Democrat test for appropriate legislation is met. It does not appear that that will be the case at the moment, but we will make a case for those amendments and see how we go, as we did in August last year.

Sitting suspended from 6.29 p.m. to 7.30 p.m.

Senator MACKAY (Tasmania) (7.30 p.m.)—Today, like many of my colleagues before me, I profess to a profound feeling of deja vu standing here about to speak on the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2]. This is the very same bill that was defeated in this place as recently as last August. This is the
same bill that has manifested itself in a number of incarnations over the term of this government. In fact, when following the debate on this bill in the House, I heard a number of speakers say that they had spoken on this bill in one form or another about 17 times. I am not quite sure how many times I have, but I think it is up there. By my calculations, that means that about 1.8 million words will have been spoken on this bill by the time it is, hopefully, rejected again at the end of this debate—or, at least, the key points of it.

I admit to a certain amount of frustration with this. I am frustrated that we are all here simply going through the motions because the government has just run out of steam and is too complacent to put up any legislation aimed at improving things for the Australian people and improving the life of this nation. Instead, we have the same old same old. We have bills being put up again and again that—in substance, with respect to this one—will not pass the Senate. This bill will not pass the Senate, because the elected representatives of the Australian people—at least, those on my side of the chamber and, I am hopeful, other senators—are simply not going to roll over in a fit of fatigue and pass it. The Labor Party will not be supporting the passage of this bill, because we believe it is our role to protect the Australian people from legislation that is not in their best interests. This bill certainly is not in the best interests of the working people of this country. So, jaded and frustrated as I feel, I will stand here again and go through the motions—just as I will later this week, again, when the government puts up the Telstra sale bill.

The truth is that this is really a tired and washed-up government with no real third term agenda. Where are the bills that Mr Howard talked about with respect to what he termed the ‘barbecue stopping issues’—the work and family issues? He promised action on that front at the last election, and we are all still waiting. Perhaps I should not be quite so uncharitable, because I guess in Mr Howard’s book this is a work and family bill. By passing this bill we would be allowing many more Australian workers to spend more time with their families—because they will have been unfairly dismissed and will not have any work to go to. Perhaps that is where we have all missed the point.

**Senator Abetz**—Get a new gag writer!

**Senator MACKAY**—You can talk, Senator Abetz. We—on this side of the chamber at least—have been waiting and waiting for this government to introduce legislation to address what the Prime Minister identified as the key issue for this term: assisting workers to better balance work and family responsibilities. We have been waiting and waiting for legislation or policies to improve access to child care, to bring in a system of paid maternity leave—something I know that both you and Senator Crossin have been fighting very hard for—

**Senator Crossin**—The gas has run out on the barbecue!

**Senator MACKAY**—That is right. We have been waiting for legislation and policies to give workers more flexibility in how they juggle work and family. We thought that we were waiting in vain, but no, it was here all along. This is it! Do you want time off after having a baby? No worries! Tell your boss that you are pregnant, be sacked on the spot and then take off all the time you like! Because you are a casual worker who has been there less than six months, you have no chance of bringing an unfair dismissal claim. You cannot get child care to cover your shift-work hours? That is okay. Once your boss has unfairly sacked you with no redress for you, you will not need child care!

I am amazed that we did not recognise this cunning plan before. This is the Prime Minister’s work and family legislation. It is here!
I am sure that any day now this government will be introducing legislation to bring back the marriage bar. I am sure that our enlightened and forward-looking Prime Minister would recognise that he should not discriminate against those in a relationship other than marriage. I am sure that, in that case, he would see his way clear to having an all-inclusive bill whereby women in de facto relationships, like me, and one member of a same-sex couple would also have to give up work. Yes, I can see it now: the reintroduction of the marriage bar, like the reintroduction of the ability to unfairly dismiss workers, would be an ideological, plausible way for this government to attempt, in the Orwellian way that it does, to promise to bring in ways of assisting workers to balance work and family. Keep women at home—problem solved.

That may be the government’s way, but it is not the Labor Party’s way, and we will not stand by and allow this government to strip away the entitlements of Australian workers. For anyone who remains in doubt about what this bill is attempting to do, even after over 1.8 million words have been spoken about it, let me recap and add some more words. This bill, one, reduces the amount of compensation that can be awarded to an unfairly dismissed employee of a small business; two, extends from three to six months the qualifying period before an employee of a small business can bring a claim for unfair dismissal; three, narrows the scope for an employee to mount an unfair dismissal action; and, four, reduces the amount of back pay available where reinstatement is ordered.

I am here to say to the government, the Prime Minister, Mr Abbott and, in particular, Mr Andrews that size does not matter and nor should it. There is no argument that will convince anybody in the Labor Party that an employee in the small business sector should possess fewer rights than any other employee. Why should a worker who works in a business with 20 employees have less protection than one who works in a business with 21? Does the worker in the smaller enterprise have children who have fewer health care and education needs? Is the small business employee any less likely to experience financial hardship if unfairly put out of a job? Are they more likely to find a new employer who will believe them when they say at an interview, ‘Yes, I was sacked from my last job, but I hadn’t done anything wrong. It wasn’t fair but, because I only had 15 colleagues, I couldn’t do anything about it’?

The Prime Minister is fond of trotting out his truisms about Australian culture and what he believes defines the Australian character. One of the things that he thinks defines Australians is our belief in a fair go. I agree with the Prime Minister on that, most of the time. I think that the concept of a fair go is held pretty fondly by Australians and sits pretty deeply in the Australian psyche. So I ask the Prime Minister and his various ministers for industrial relations and workplace relations, through you, of course, Madam Acting Deputy President McLucas: where is the fair go in this? How can it be fair to have one rule for workers in a workplace with 21 employees and another harsher one for workers in workplaces with 20? It cannot be fair, and that is one of the reasons Labor will not be supporting the bill.

One of the more disingenuous claims made by the government about this bill is that its purpose for introducing the bill was to create a unitary system of unfair dismissal laws. Nobody on this side of politics believes that for one second. I think we have seen enough from this government to know that their prime motivation in the industrial relations field is removing power and rights from workers. This is a government that laid its cards on the table when it let the attack dogs loose on Australian workers on the water-
front. I will never forget that image—and I am sure nobody on this side of the chamber will—and nor should any Australian worker. That is this government’s preferred industrial relations system—a vicious, snarling system snapping at the rights of workers. So any claim about this being about creating a more simplified, unified system clearly has to be taken with a grain of salt.

Surely if the government were serious about creating a more unified system, the first thing they would have done is consult with the states. They would have gone to the states and said, ‘How can we ensure we get a better system?’ They would maybe take a draft proposal to them for comment to kick off discussions. Did the government do any of that? No, I am advised not. In fact, I checked with the office of my colleague Judy Jackson, the Tasmanian Attorney General and Minister for Justice and Industrial Relations, as recently as last Friday to see what level of consultation by the federal government had taken place on this bill. What was the answer? None. There was no consultation on a bill now in the Senate for the second time which has a direct and huge potential impact on the operation of the Tasmanian industrial relations system.

Professor Ron McCallum, a leading academic in the field of industrial law, said that this bill:

... will strike a blow at the five remaining state systems of employment regulation ...

He went on to say in his speech entitled ‘The future of state employment regulation in Australia’:

... the enactment of this Bill will mean that 85% of Australian employees will only have recourse to the Federal Termination of Employment machinery when seeking to challenge dismissals which are harsh, unjust or unreasonable. This would mean that the State termination of employment regimes would have little work to do because currently they cover approximately 40% of the Australian workforce, and I suggest this would have a telling impact on the viability of these State-based systems of labour relations regulation, especially in the smaller states of South Australia and Tasmania.

Despite not being consulted, a considerable body of research has been undertaken in the states into the implications of this bill. In my home state of Tasmania, the Tasmanian Industrial Commission assessed the last 300 applications that were filed before this bill was put the first time. Their research found that there would be a significant impact on the work of the commission and that the bill would result in a number of potential applicants—33.2 per cent of their sample—not being able to pursue a claim in either the state or federal jurisdiction. Also, 46 per cent of the sample would need to pursue a claim in both the Australian Industrial Relations Commission and the Tasmanian Industrial Commission.

Clearly that is not a recipe for a simpler, more unitary system. What is more, it would bring about a reduction in the work of the state systems to the point where their viability is threatened and there would be an increase in the work of the federal commission. Funny that: the habits of a lifetime are quickly broken by this government when it comes to industrial relations. The explanatory memorandum that accompanies this bill states that the number of cases before the Australian Industrial Relations Commission will increase from around 8,000 to 14,000. We would have a near doubling of the AIRC’s caseload. Already the government has allocated nearly $17 million to deal with this increased load. This particularly intrigues me because it flies in the face of nearly every other action of this government. In this instance, unlike dental health, World Heritage area funding in Tasmania or any of the other attempts to cost shift to the states,
in this instance the government is saying, ‘Give it to us and we’ll pay you.’

As well as increased funding, one could also fairly safely assume that the government may take the opportunity to appoint some new commissioners, and that really worries me because we all know what this government’s record is like when it come to appointing mates. I have seen more than enough of the government’s form in my role as Deputy Chair of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee. I know, based on the government’s previous form, that the workers of this country should be afraid; they should be very afraid. Look at the appointment of Professor Flint to the chair of the Australian Broadcasting Authority. Look at Jonathan Shier and the stacking of the ABC board. Look at Christopher Pearson and the SBS board. Yes, the government’s track record is there for all to see—and that is just in areas that come within the ambit of the committee I am on. I do not think it will be too long before the government will be announcing the appointment of ‘Commissioner Reith’, or ‘Commissioner Moore-Wilton’ or some other similar travesty.

Senator Abetz—There’s an idea!

Senator MACKAY—Senator Abetz says that is an idea. In order that we can move into committee I will conclude by saying that Labor will not be supporting this bill because it is a bad bill, an unjust bill and an unworkable bill. We have never supported this legislation aimed, as it is, at grabbing power from the states—something I think is quite extraordinary, given this government’s form, apart from the frolic on health and hospitals—and diminishing the rights and protections of working people. We have never supported it and we are not about to start now.
missal. Here is another classic case of the Labor Party being lazy, not doing their research, trying for the funny one-liner and misrepresenting what the law is at the moment.

Senator Mackay indicated in her contribution that she had contacted Minister Jackson. It is no wonder she got the response that she did, because Minister Jackson is not exactly the sharpest tool on the rack when it comes to the state ministry in Tasmania. In February 2003 the Minister for Employment and Workplace Relations wrote to state workplace relations ministers explaining the intent of this bill and inviting comments. The bill was also discussed at the meeting of the Workplace Relations Ministers Council on 28 March 2003. I understand there was recently a ministerial council which Minister Jackson could not be bothered to attend. Of course, with that history it is all the federal government’s fault as opposed to, as we all know, Minister Jackson’s incompetence in Tasmania. There was also a Senate committee inquiry into this. If it were a matter of such great importance I am sure that Labor senators on that committee would have consulted with the state Labor governments and ministers around Australia. I cannot blame them on this occasion for not wanting to consult with Minister Jackson, because quite frankly it would have been a waste of time.

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Order! Senator Abetz, I request that you be a bit more careful with your language.

Senator ABETZ—About it being a waste of time to consult with her?

The ACTING DEPUTY PRESIDENT—You have referred on a number of occasions to Ms Jackson in a way that I think reflects poorly on her. I think that is unparliamentary. I ask you to be careful with your language.

Senator ABETZ—For the purposes of this debate I will accept that. With great respect I suggest to the chair that she have a look at some of the other rulings, because question time will be cleaned up considerably from the Labor Party’s point of view, if that ruling, like terms of incompetence, is not allowed. With respect, I think that is being a bit precious but I accept your ruling for the purposes of this debate.

We then had the allegations of the thuggery on the waterfront by those opposite. We know where that thuggery came from: the Maritime Union of Australia. Madam Acting Deputy President, take the tip that it was not the workers on the wharves with the dogs trying to break out to attack the MUA. It was the MUA trying to break in to cause their thuggery and havoc on the machinery and the workers who were going about their lawful duty behind the fences. Whilst the Australian Labor Party continue to come into this place and champion the thuggery of the Maritime Union of Australia, they are not fit to govern because they are prepared to do anything for the support of the Maritime Union. We know how important it is, because it was the Maritime Union that saved Senator Kerry O’Brien’s endorsement with the Labor Party in Tasmania in recent times.

In this discourse we also heard from Senator Mackay about the World Heritage area and the alleged lack of funding. Isn’t it amazing that the state Labor government in Tasmania says it does not have $900,000 to support the jobs so necessary for the World Heritage area, but it has $500,000 for a new office for parliamentary secretary Katherine Hay and the hundreds of thousands of dollars required for a new minister Mr Ken Bacon. The simple fact is that the state Labor government in Tasmania are more interested in creating ministerial jobs than they are in creating jobs in the World Heritage area.
Senators need no reminding that this parliament has debated unfair dismissal laws since the Keating government first legislated for an unfair and unworkable set of arrangements in 1993. I remind those opposite of the first parliamentarian to fall foul of these very laws. Was it one of those obnoxious coalition MPs? No, it was not. It was one of their own—Con Sciacca, the member for Bowman—who fell foul of these very laws. That is how stupid and unworkable they were. Even Labor members were horrified to find out how draconian the legislation was when it happened to be applied to their own work force. The Keating government’s partial and untidy retreat from those laws left Australia with unfair dismissal regimes in each state as well as a federal law that is still regarded with deep suspicion by most businesses. For the record, I do not know of any employer that asks, ‘Who can we sack today?’ In fact, the reason that they employ people is to help promote their business activities. All employers want to have a good and workable relationship with their employees. When the relationship breaks down, for whatever reason, it is appropriate that an employer can take appropriate action on the basis that it is not harsh, unjust or unreasonable.

Since 1996 the present government have sought to provide a fairer go all round for employees and employers, while simplifying the means for handling unfair dismissal claims. Progress has been slower than the community would have liked, and every year Australian industrial tribunals still deal with 16,000 to 17,000 unfair dismissal claims. Currently, about 40 per cent of these claims are lodged with the AIRC. Passage of this bill would break the institutional gridlock that makes the handling of unfair dismissals in Australia perplexing and costly for both employers and employees. If passed, the bill would increase the coverage of federal unfair dismissal laws from about 50 per cent to 85 per cent of all Australian employees. Other workers, including independent contractors and deemed employees, would still have access to remedies and protections under relevant state laws. Few seriously dispute the need for a fresh approach. When the bill was first debated in the House of Representatives, the former Minister for Employment and Workplace Relations, the Hon. Tony Abbott, said:

Maintaining six separate industrial jurisdictions makes as much sense as keeping six separate railway gauges.

The former shadow minister, the Hon. Robert McClelland, expressed a similar sentiment, saying:

... it is silly, quite frankly, to have six disparate industrial relations systems, and the Labor Party recognises that.

Other ALP speakers have echoed that view during debate on this bill. The Australian Democrats workplace relations spokesman, Senator Murray, has also expressed strong support for one national industrial relations system, including for a single set of unfair dismissal laws. He reaffirmed that support in a speech delivered to the Australian Mines and Metals Association national conference just last Friday.

The cost and confusion generated by the six different arrangements that currently operate across the country has been widely acknowledged by business and academic commentators and in the wider community. For instance, independent research by the Melbourne Institute of Applied Economic and Social Research shows that one-third of Australian businesses do not even know whether their workplace relations are covered by state or federal law. Other independent research conducted by Don Harding of the Melbourne institute reveals that the current unfair dismissal arrangements add an estimated $1.3 billion annually to the costs...
of running small and medium sized businesses. Part of that cost is reflected in the madness of maintaining six different unfair dismissal laws, with the forum shopping and double handling that that entails.

It is deeply disappointing that we appear to have again reached a stalemate over this very important and potentially groundbreaking bill. This stalemate comes despite the government expressing a willingness to consider a raft of Democrat amendments including: delaying the commencement of the bill; having concurrent appointees to the AIRC handle unfair dismissal claims, subject to agreement with each state; removing the provisions in the bill that treat dismissals of small business employees differently; and modifying the bill’s treatment of exceptional circumstances for the purpose of determining whether a redundancy may give rise to an unfair dismissal. The government was also prepared to consider a number of wide-ranging Democrat proposals, including: new definitions of ‘employer’ and ‘employee’ that would include deemed employees and independent contractors; and preserving, for a time, state based unfair dismissal remedies for casual employees.

Despite the government’s willingness to explore the opportunities for sensible compromise, Senator Murray—for all his eloquent words about the importance of moving to a unitary system in his recent speech to the AMMA—is still not satisfied, apparently closing the door to reform with the two-line observation:

The Democrats have been talking at length with the Government to find common ground. The sticking point is that while the Democrats desire a unitary Industrial Relations system, we will not do so at any cost.

One might ask: what would be an acceptable cost? For their part, the Democrats want the government to agree to an amendment that would reduce the period of exclusion from unfair dismissal remedies for short-term casual employees. The Democrats want to allow casual employees with only six months service access to federal unfair dismissal remedies. The government believes that the present 12-month threshold draws an appropriate distinction between short-term and long-term casuals. More to the point, this is the standard that has applied at the federal level for the past eight years. The other Democrat proposal the government cannot accept is for casual employees to continue to be able to access state unfair dismissal remedies. This would make a mockery of the concept of a national system and would reduce its coverage to fewer than three-quarters of employees. Processes and the remedies available would vary from state to state, which would increase complexity, add to costs and provide a possible vehicle for forum shopping between the state and federal tribunals.

In agreeing to consider many of the Democrats’ proposals in relation to this bill, the government was conscious that it would be putting on hold the proposed changes to the federal law contained in this bill and in the fair dismissal bill, which has been twice rejected by the Senate during the life of this parliament. This would involve a significant shift from the government’s preferred position, but when reasonable compromises have needed to be made in securing better laws then the government has always been prepared to make them. The Australian Democrats, however, have continued to insist on further amendments which would not only reduce the scope of this bill but also make significant changes to the federal law as it has operated for the past eight years. This the government cannot accept. It is a pity the government’s constructive approach and willingness to compromise have not been reciprocated. The Democrats appear willing to support a national system for unfair dismissal only in theory, not in practice. I call
upon non-government senators to give a little ground, to agree to a national approach to unfair dismissal laws and to support this bill, which I commend to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia)
(8.00 p.m.)—Unless senators wish to extend the debate, my intention is to run a short set of propositions—

Senator Abetz—I think we’ve got heated agreement!

Senator MURRAY—All right. There are two circulated sheets of amendments before senators: 4160 revised, and 4194 revised. Although they were only circulated today, they are an adaptation of amendments which have been before the chamber before, and certainly the government and, to some extent, the opposition are familiar with them. I intend to put these 33 amendments into seven packages. I am quite happy for any alteration to occur as we go along, if either the government or the opposition wants.

Accordingly, I would like to commence with Democrat amendment (1), on the commencement date, on sheet 4160 revised. Amendment (1) is a slightly reworded amendment to the amendment we initially moved last year, but the intent is the same. On the face of it, the amendment is plain. There is currently a bill on the double dissolution list called the Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2], which is known in our party room as the fair dismal bill. That is the one which seeks to exempt all small businesses from federal unfair dismissal laws. The Democrats, the Labor Party and, as I understand it, most non-government parties and Independents oppose this bill, as they have its predecessors.

If we support schedule 1 of the bill before us, which the Democrats do with some amendments, and if there is a double dissolution election and if the fair dismissal bill passes a joint sitting—there are a lot of ifs there—effectively we might be facilitating the exclusion of a much greater number of small business employees from unfair dismissal remedies, as a large number of small business employees will be brought in under the expansion of the federal regime from about 50 per cent to about 85 per cent coverage. But there were a lot of ifs there, and I must remind the chamber that there have been some six double dissolution elections—and in only one of those was there actually a joint sitting—and, if there is a double dissolution this time around, you can never be sure that the numbers of the Senate and the House of Representatives combined will give you sufficient numbers to deliver you an outcome. But, having made those remarks, I will say that I am still not going to try my luck.

There is an absolute contradiction in the government’s seeking to cover the field, which we agree with, and simultaneously seeking to exclude small business employees from the provisions of the federal law on unfair dismissals. Consequently, the amendment we put seeks to ensure that it can only commence the day after 11 August 2004, which, I am advised, is a safe day after which a simultaneous dissolution of the Senate and the House of Representatives may not occur. I therefore move Democrat amendment (1) on sheet 4160 revised:

(1) Clause 2, page 1 (line 7) to page 3 (line 10), omit the clause, substitute:

2 Commencement

(1) Subject to subsection (2), this Act commences on 12 August 2004.
(2) If the House of Representatives and the Senate are dissolved simultaneously under section 57 of the Constitution after the day on which the Bill for this Act is passed by the Senate and before 12 August 2004, this Act does not commence at all.

Senator JACINTA COLLINS (Victoria) (8.04 p.m.)—Senator Murray, I will take this opportunity to comment in general with respect to the Democrat amendments rather than on each of the seven packages that you propose. Labor’s position in respect of the Democrats amendments is the same as it was when this bill was last debated in August last year. We are opposed to this bill lock, stock and barrel. Our concerns are with the very core and philosophy of the bill, which is not assisted by the genuine attempts of the Democrats to ameliorate its effects. Labor believe that the Howard government must not be allowed under any circumstances to override state systems in this area by force.

I take this moment to note Senator Abetz’s earlier comments about consultation. I think the way in which he has characterised consultation—that perhaps Labor senators on the committee could have consulted—fails to acknowledge the critical issue here. The nature of genuine consultation is that it might actually have some impact, and certainly we have seen no evidence of any impact of the consultation with states on the bill as presented. In fact, as I understand it, the discussions that occurred with states occurred almost simultaneously with the introduction of the bill. As I highlighted in my speech in the second reading debate, there had actually been a meeting of the state Labor ministers concerned within a reasonable time for consultation to have occurred but this matter had not even been on that agenda.

What is worse is that this bill does not even achieve its stated aim of having just one system. There would still be multiple jurisdictions. State unfair dismissals systems would remain to service the estimated 15 per cent of employers who are not corporations and, with the Democrat amendment, a number of other categories of workers as well. However, those state tribunals under these proposals would, in effect, generally be gutted. The effect of that gutting, though, would not deal solely with unfair dismissals, and—perhaps this is the real intention of the government behind this bill—it is really a serious attempt to undermine state industrial jurisdictions. Labor’s view is that that is not the way to seek to achieve national uniformity. To undermine state jurisdictions and not to proceed with the consent of the state governments is not the way to go. We see a better example in what happened in Victoria under the current Labor government, where such workers have remained in the federal jurisdiction but under appropriate standards now, rather than those that the Kennett government referred those workers to in a ghetto in the federal jurisdiction.

State tribunals would still consider unfair dismissal matters, but they would be gutted and this is actually admitted by the government. In its report to the Senate inquiry into the identical predecessor to this bill, the government acknowledged:

... it may no longer be cost-effective for states to maintain their own tribunal processes with such a diminished workload.

That was the government’s claim and it was supported by the evidence of its own departmental officer Mr James Smythe. Corporate employers who normally work within state industrial relations systems for their other work arrangements like awards and agreements will now have to deal with a federal system in respect of unfair dismissals but with state jurisdictions in relation to other industrial relations matters. In Labor’s view this bill creates new problems without resolving any. We are strongly opposed to
this bill and any amendments to it and, as a result, I do not propose to speak on each separate amendment.

Senator ABETZ (Tasmania—Special Minister of State) (8.08 p.m.)—At the commencement of the committee debate, this bill seeks to get rid of a system that has plagued this country for a long time and has been a huge disincentive to job creation. Estimates range from 50,000 upwards as to the number of jobs that would be created in the small business sector in particular if these laws could be changed. If you are talking about social welfare or social justice, the Senate, as I understand it, tonight will for the 40th time be denying the possibility of 50,000 of our fellow Australians finding gainful employment. That should weigh very heavily on honourable senators’ minds.

The specific amendment before us proposes to amend the bill so that, if passed, it will commence on 12 August 2004 except if there is a double dissolution before that date. I would have thought the Democrats would be hoping and praying there would not be a double dissolution, but I stray. If there is a double dissolution before that date, the bill will not commence at all. The government believes there are substantial benefits in adopting a national approach to handling unfair dismissal claims. For that reason the government was prepared to accept this and a number of significant changes to the bill. In doing so, the government was conscious that it would be putting on hold the proposed changes to the federal law contained in this bill and the fair dismissal bill that has previously been twice rejected by the Senate during the life of this parliament. Obviously, this involves a significant shift from the government’s preferred position, but if reasonable compromises need to be made in securing better laws the government has always been prepared to make them. However, the Democrats have continued to insist on further amendments which not only reduce the scope of this bill but also would make significant changes to the federal law as it has operated for the past eight years. In the absence of an agreement on maintaining the existing federal law and securing a genuinely national approach to unfair dismissal, the government believes the proposed amendment has little to recommend it.

Question negatived.

Senator MURRAY (Western Australia) (8.10 p.m.)—by leave—I move Democrat amendments (2), (11) and (12) on sheet 4160 revised:

(2) Schedule 1, page 4 (after line 12), after item 1, insert:

1A At the end of section 14
Add:

(2) If:

(a) the Commission receives an application for relief in respect of a termination of employment on the ground referred to in paragraph 170CE(1)(a); and

(b) because of section 170CF, the Commission is obliged to attempt to settle the matter to which the application relates by conciliation; and

(c) the application originates from a particular State; and

(d) an agreement is in force between the Commonwealth and that State (whether or not there are any other parties to the agreement) under which the conciliation may be conducted by a member of the Commission who also holds an office of member of a prescribed State industrial authority of that State;

then, despite section 36 and any other provisions of this Act relating to the arrangement of the Commission’s business, the conciliation
must be conducted by a member of the Commission who also holds an office of member of a prescribed State industrial authority of that State.

(11) Schedule 1, item 12, page 10 (line 3), after “1”, insert “1A,”.

(12) Schedule 1, item 12, page 10 (line 4), after “1,”, insert “1A,”.

These amendments refer to the function of dual federal and state commissioners. I will put a motivation down. I presume it will then go through the formalities of rejection. Amendment (2) is not an additional amendment; it is a reworded amendment to the amendment we initially moved last year. Again, the intent is the same. Concerns were raised by the states—I say to the chamber that I have consulted with a number of people in the states—that a federal unfair dismissal system which covered the field would lead to reductions in the resourcing of state industrial tribunals and hence their ability to perform their other roles. Apparently, unfair dismissal takes up a vast amount of state commissions’ time, which is a shame when you consider there are much more important things to be done in the field of industrial relations.

Concern was also raised that workers in regional and rural areas who currently can attend local courts visited by state commissioners will incur increased costs to attend the federal commission which some expect would be based solely in capital cities. My first thought was to mandate that state commissioners would have to deal with these for the Commonwealth, but I found out I cannot do that constitutionally. This enshrines the principle which is already established. The Commonwealth and states share this jurisdiction in two states. The intention is simply to ask, subject to an agreement which there would have to be between the Commonwealth and respective states, that members of those commissions could share the duties in this area. This is a practical and reasonable set of amendments which would improve the operation of the bill.

Senator JACINTA COLLINS (Victoria) (8.12 p.m.)—In relation to Senator Murray’s comments, as I previously indicated, Labor would oppose these amendments. However, we appreciate that Senator Murray has indicated that, given the dilemma presented by this bill, the Democrats have sought to see if there was some way of dealing with the problems associated with essentially gutting the workings of the state commissions. We commend him for those efforts. However, even with these amendments and if the bill were amended according to Senator Murray’s efforts, the states still have serious problems with the bill as it stands. For those reasons we continue our opposition.

Senator ABETZ (Tasmania—Special Minister of State) (8.13 p.m.)—The government believes that the proposed amendments are somewhat bureaucratic and largely unnecessary but was prepared to agree in principle to the amendments, if it would have facilitated passage of the bill. That has not occurred, as a result of which we oppose this raft of amendments.

Question negatived.

Senator MURRAY (Western Australia) (8.13 p.m.)—I move R(3) on sheet 4160 revised:

R(3) Schedule 1, page 4 (after line 30), after item 4, insert:

4A Section 170CBA

Omit “12 months” (wherever occurring), substitute “6 months”.

We revised this amendment from this morning because we had not taken into account the recent changes to the Workplace Relations Act as a result of the Workplace Relations Amendment (Fair Termination) Bill 2002, which moved the casual exclusion
from regulations to the act. I remind the minister that not all is doom and gloom in his world; the government does sometimes get workplace relations bills through this chamber, and this was one of the instances where that occurred.

At the moment the probationary period for casual employees varies enormously between the various jurisdictions. In the Commonwealth jurisdiction, which covers Victoria, the ACT and the Northern Territory as well as those people who fall under Commonwealth legislation, the probationary period during which casuals are excluded from accessing the federal unfair dismissal laws is 12 months. In New South Wales it is six months. In Queensland it is 12 months, excepting for valid reasons. In South Australia it is six months, and in Western Australia and Tasmania there is no exclusion.

I saw a recent figure that showed that the number of casuals nationally has increased very significantly to about 2½ million employees, many of whom we would have classified as part-time regulars rather than casuals—to use the old terminology. As far as I can establish—and as the minister’s advisers will tell him—it is very difficult to work out where casuals fall in terms of state and federal legislation, but mostly the evidence is that casuals fall under state legislation. It is extremely undesirable for there not to be a common national standard as to when probation applies.

When the Democrats agreed with the government originally to establish a probationary period of 12 months, it was regarded as reasonable in the circumstances—that is, reasonable to us. However, we think the nature of casual employment has changed so much that it is time to look again at the probationary period. Also, we need to diminish somewhat any anxiety the states, and the various organisations within the states, would have at covering the field—a provision which may result in numbers of their employees losing the access that they presently enjoy to the unfair dismissal jurisdiction.

In this amendment we recommend that the probationary period—the period for which people are excluded—be six months. That would deliver improved access for those under the Commonwealth jurisdiction at present—Victoria, the ACT and the Northern Territory. It would provide the same access for New South Wales, improved access for Queensland and the same access for South Australia. Western Australia and Tasmania would move from a no-exclusion basis to an exclusion basis.

Frankly, as I said in my speech in the second reading debate, I have always had difficulty with the idea that there should be no probationary period at all for an employee. I have never understood that and I have not understood why it would be reasonable in the Western Australian and Tasmanian jurisdictions. Now my party and I have to carry the weight of the balance of power on these issues. Faced with the circumstances where you effectively have three positions in unfair dismissal—12 months, six months and zero months—what Senator Abetz wants me to do is agree with him and just impose 12 months on everybody.

I have taken a reasonable middle position and I think that this is a reasonable approach. The employee probationary period for permanent staff is three months and for casuals it would be six months. I recognise that that would be a compromise between the various jurisdictions, but it would assist the advancement of this bill. Regrettably, the government and the Democrats have not been able to agree on that matter, but I want to thank Minister Andrews for his efforts to resolve this particular issue.
Senator JACINTA COLLINS (Victoria)  
(8.18 p.m.)—Senator Murray has my sentiment on this particular amendment. However, from the Labor Party’s point of view, resolving this issue does not resolve the problems with this bill. Even were the government prepared to agree to this and all of the other Democrat amendments, we would still have outstanding problems with the bill as it would stand. Following Senator Murray’s comments, this issue highlights that this bill is really about reducing standards to the lowest common denominator. Again, while an opportunity existed for the government to genuinely attempt to introduce a common national standard, what has in fact occurred is an attempt to bring down or lower general standards. The issue of the access of casuals to unfair dismissal protections is a good example—we would go to the lowest denominator, which is 12 months under this proposal. The government’s lack of preparedness to compromise highlights its real agenda in relation to this bill, and Senator Murray has every right to be disappointed that the government has demonstrated that to be the case.

Senator ABETZ (Tasmania—Special Minister of State)  
(8.19 p.m.)—At the outset I acknowledge Senator Murray’s comment that from time to time the Senate has been gracious in allowing small titbits of our employment and workplace relations agenda through the Senate, and that has been courtesy of the Australian Democrats as opposed to those who truly sit on the other side, who of course get their instructions on these matters from trades hall.

The reasonable position that Senator Murray refers to is an interesting one. He agrees with us, I think, that the zero position is unreasonable, so in discussing what time length would be reasonable I assume that he is not putting zero months into that mix. If he does not put that into the mix and if he misses that as being completely unreasonable, I simply remind him that the 12-month period has been the national situation for eight years. Queensland and Victoria have the 12-month period as well, so a fair swag of the Australian work force is already covered by the 12-month period.

The proposal of the Democrats would enable casual employees with six months service to access federal unfair dismissal remedies, compared to the current threshold of 12 months. The 12-month exemption has been in place since 1996. In 1996, the government and the Australian Democrats agreed that casual employees should be required to work for their employers for 12 months before being able to make unfair dismissal applications. The expected duration of a job currently held by a casual employee has been estimated to be approximately 4.6 years. In this context 12 months is a relatively short period of time.

Since 1996, Australian businesses have relied on the 12-month exemption for casuals when developing their employment practices. The exemption ensures that businesses have the flexibility to hire short-term casuals without the burden of a possible unfair dismissal proceeding if it turns out that the employee is not needed permanently. Reducing the exemption from 12 months to six months would place an extra burden on businesses, particularly small businesses, by forcing them to rearrange their employment practices and leaving them open to termination of employment claims for a larger number of their employees. It is those sorts of factors that militate against small businesses increasing their work force. As I said before, all indications show that if these laws were changed another 50,000 of our fellow Australians would be in employment at this moment.

Question negatived.
Senator MURRAY (Western Australia) (8.23 p.m.)—by leave—I move Democrat amendments (5) to (9) on sheet 4160:

(5) Schedule 1, item 7, page 5 (line 13), omit “It is the intention”, substitute “Subject to subsection (1A), it is the intention”.

(6) Schedule 1, item 7, page 5 (after line 34), at the end of the note, add:

; or (c) to the extent that it provides a remedy to persons who are not employees within the meaning of this Act (for example, a State or Territory law to the extent that it deems a person who is not an employee for the purposes of that law to be such an employee and gives the person a remedy in respect of harsh, unjust or unreasonable termination).

(7) Schedule 1, item 7, page 5 (after line 34), after subsection (1), insert:

(1A) If:

(a) the employment of an employee:

(i) who is referred to in subsection 170CB(1); and

(ii) to whom paragraph 170CBA(1)(d) applies;

is terminated; and

(b) a provision (the State or Territory provision) of a State or Territory law referred to in paragraph (1)(b) would, but for subsection (1), apply in relation to the termination; and

(c) the employee makes an application (the remedy application) for a remedy under the State or Territory provision, in relation to the termination, within 6 months after the commencement of this section;

it is the intention of the Parliament that this Division not apply to the exclusion of the State or Territory provision, so far as the provision applies in relation to the matter to which the remedy application relates.

(8) Schedule 1, item 7, page 6 (line 1), omit “It is the intention”, substitute “Subject to subsection (2A), it is the intention”.

(9) Schedule 1, item 7, page 6 (after line 12), after subsection (2), insert:

(2A) If:

(a) the employment of an employee:

(i) who is referred to in subsection 170CB(1); and

(ii) to whom paragraph 170CBA(1)(d) applies;

is terminated; and

(b) a provision (the State provision) of a State award or a State employment agreement would, but for subsection (2), apply in relation to the termination; and

(c) the employee makes an application (the remedy application) for a remedy under the State provision, in relation to the termination, within 6 months after the commencement of this section;

it is the intention of the Parliament that this Division not apply to the exclusion of the State provision, or any other provision of the State award or the State employment agreement, so far as the provision applies in relation to the matter to which the remedy application relates.

I do not intend to motivate these items. They relate back to amendment (3) and would have provided for transitional, or grandparent, circumstances.

Question negatived.

Senator MURRAY (Western Australia) (8.23 p.m.)—I move Democrat amendment (1) on sheet 4194:
(1) Schedule 1, page 4 (after line 21), after item 3, insert:

3A After section 170CBA

Insert:

170CBB Definition of employee

(1) For the purposes of this Division, a person (the worker) who contracts to supply his or her labour to another person is to be presumed to do so as an employee, unless it can be shown that the other person is a client or customer of a business genuinely carried on by the worker.

(2) In determining whether a worker is genuinely carrying on a business, regard must be had to those of the following factors which are relevant in the circumstances of the case:

(a) the substance and practical reality of the relationship between the parties, and not merely the formally agreed terms;

(b) the objects of this Division;

(c) the extent of the control exercised over the worker by the other party;

(d) the extent to which the worker is integrated into, or represented to the public as part of, the other party’s business or organisation;

(e) the degree to which the worker is or is not economically dependent on the other party;

(f) whether the worker actually engages others to assist in providing the relevant labour;

(g) whether the Australian Taxation Office has previously made a personal services determination in relation to the worker pursuant to Subdivision 87-B of the Income Tax Assessment Act 1997, in connection with work of the kind performed for the other party;

(h) whether the worker would be treated as an employee under the provisions of any State law governing unfair dismissal which, but for this Act, would otherwise apply to the worker.

(3) A contract is not to be regarded as one other than for the supply of labour merely because:

(a) the contract permits the work in question to be delegated or subcontracted to others; or

(b) the contract is also for the supply of the use of an asset or for the production of goods for sale.

(4) An employment agency which contracts to supply the labour of a person (the worker) to another party (the client) is to be deemed to be that person’s employer, except where this results in a direct contract between the worker and the client in relation to that labour.

(5) Where:

(a) an arrangement is made to supply the labour of a person (the worker) to another party (the ultimate employer) through a contract or chain of contracts involving another entity (the intermediary); and

(b) it cannot be shown that the intermediary is genuinely carrying on a business in relation to that labour that is independent of the ultimate employer, on the basis of the factors set out in subsection (2);

the worker is to be deemed to be an employee of the ultimate employer.

(6) For the purposes of this section, employment agency means an entity whose business involves or includes the supply of workers to other unrelated businesses or organisations, whether through a contract or a chain of contracts.

This amendment relates to the definition of ‘employee’, which the government were ec-
static to discover was shorter than the previous one, but it still does not meet their needs. Frankly, this is a tougher nut to crack. I have been surprised at the quarrelling over the probationary period for casuals. Since most casuals, as far as I can establish, are under the state regimes I do not really see why it matters that much to come to a compromise.

This one has far more difficult policy consequences, and I think that is true for any side of the chamber. The growth in precarious and atypical employment has meant that increasingly legitimate workers are being excluded from recourse in the unfair dismissal system. In my experience the government have always supported the notion that genuine employees should have access to unfair dismissal laws except, of course, with regard to their peculiar small business exemption idea. I also acknowledge that it is the view of the Labor Party that any genuine employee should have access to the provisions of the law.

You have to ask yourself: in what respect is the law deficient? The law is deficient in the sense that there is a lack of certainty as to what constitutes an employee. A number of states have tried to make some inroads on this—the latest is South Australia, which is currently investigating it—but we are still constrained by past cases and past relationships. One noted academic has done a lot of work in this area, Professor Andrew Stewart. He has proposed that many of the problems created by the growth in precarious employment and atypical employment can be dealt with by a redefinition of the term ‘employment’. For the purposes of our amendment I have plagiarised from Professor Stewart, who is a real authority in this area—although I do not think you can plagiarise from somebody when you acknowledge your debt to them, so perhaps that is the wrong word. The definition looks at the principles about the relationship of employee and employer and attempts to identify genuine employees.

We would assume that the government support the intent of such an amendment. As I say, they have always supported access to dismissal laws for genuine employees. The issue is not one that is going to go away. If you are going to address the issue of a unitary system, sooner or later you are going to have to decide who falls within it. Of course, that is the difficulty with the definition of ‘employee’. The government are as aware as I am that the definition of ‘employee’ will affect many more fields than just unfair dismissal. I have consistently made a very simple point, and it is a point that emerged from the work the Senate has done in reviewing and then passing the alienation of service income taxation legislation, and that is that you cannot at one level deem an employee being so for tax purposes and then in workplace relations law exclude them. I thank the minister for his attitude in discussing this issue. I recognise there are difficulties in addressing this area, but this question of access is a key one. This and probationary casuals are really the two areas that have undone my campaign for a unitary system because they are areas where my party as a whole has not been able to come to an agreement with the government.

Senator JACINTA COLLINS (Victoria) (8.28 p.m.)—This amendment in relation to the definition of ‘employee’ broadens the current scope of unfair dismissal law to cover some contractors. The proposed broader definition is consistent, as Senator Murray has said, with tax definition. Any workers who would be employees under state laws governing unfair dismissal would continue to be covered by the relevant state law. We appreciate the Democrats’ efforts to develop this area of law and address the issue of who really is an employee. Senator Murray has often highlighted that he has
sought some consistency between the arrangements that apply in other areas of federal jurisdiction or arrangements that would apply to businesses in relation to their corporate responsibilities or tax obligations. However, it is a fairly consistent theme that Senator Murray, in relation to industrial relations, continues to encounter opposition to applying such standards equally to employees as would apply to the employers in business considerations. However, it is Labor’s view that this is not the forum in which to address this problem, and we look to opportunities in the future to deal more clearly with issues relating to the definition of ‘employee’.

Senator ABETZ (Tasmania—Special Minister of State) (8.29 p.m.)—At the outset I want to acknowledge Senator Murray’s statement, which I think indicated that he is of a particular view, but all of us operate within a particular structure. The view of the Democrats is that this amendment should be pursued. I indicate that the government strongly oppose this amendment, which would amend the bill to expand the definition of ‘employee’ to include many independent contractors.

The amendment sets out various factors that would supposedly help in determining whether a worker is an independent contractor or an employee. The factors include most, although not all, of the common law indicators of employment but offer no guidance as to how they are to be applied in any given situation. We believe this will introduce complexity, uncertainty and lack of choice for Australian workers. The government believe that all Australian workers should have the freedom to choose to enter into independent contracting rather than traditional employment relationships. Workers who choose to be employees will attract the full range of protection provided by industrial legislation, including unfair dismissal laws. Those who choose to work as contractors will enjoy other benefits such as flexibility and market freedom.

The government does not seek to regulate genuine contractual relationships beyond providing for remedies in relation to unfair contracts and protecting freedom of association. Contractors also have access to remedies under the Trade Practices Act 1974, under some state laws—specifically fair trading legislation—and at common law. Changes to federal laws can also have the effect of overriding existing state regimes in ways which are difficult to predict and which may disadvantage employers, contractors and employees alike. The government will not agree to such a potentially radical change without first consulting the affected parties.

Senator NETTLE (New South Wales) (8.31 p.m.)—I enter this debate to put the Australian Greens’ position on the record, particularly in relation to this amendment. I and other senators in the chamber recognise that, with the increasing amount of casualisation occurring in our workforce, we need to deal with the question: at what point is an employee defined as an employee? As I have said in relation to this bill on previous occasions in the chamber, I congratulate Senator Murray on the work that has been done on the definition of ‘employee’. The Australian Greens will support this amendment.

This is my first opportunity to contribute to the debate in committee on the bill and to put the Australian Greens’ position on the record. We will not support a piece of legislation which seeks to reduce the rights of workers, particularly casual employees, to unfair dismissal proceedings—and that is essentially what this bill does. We have been involved in the debate previously and recognise the merits of a unitary system but not a unitary system that comes in under this government with its track record of reducing the rights of employees, particularly casual employees. This
is the umpteenth attempt to exempt small businesses from unfair dismissal laws and to reduce the opportunities for casual employees to access unfair dismissal laws. We are not in a position to support a piece of legislation that takes away the rights of workers.

We do not support the bill, but we do support the amendment moved by Senator Murray, which seeks to address a growing issue in our workforce—that is, casualisation and the definition of ‘employee’ under circumstances where people’s alignment with their employer is more and more tenuous as levels of subcontracting and irregular employment occur.

Senator ABETZ (Tasmania—Special Minister of State) (8.33 p.m.)—I will be very brief. I cannot let the comments of the ‘Australian extremes’ go by. The simple fact is that under this government there has been a growth in full-time employment. The so-called increased casualisation of the work force is something that is easy to roll off the tongue, but those of us who have actually done the research know that there has been growth in full-time employment and that it has been a very strong growth in that area. Any assertion to the contrary is simply incorrect. I also take the opportunity to indicate that I may have said that tonight will be the 40th time that this place will have rejected the unfair dismissal laws. It will in fact be the Labor Party that will have opposed this for the 40th time, both in this place and in the other place.

Question negatived.

Senator MURRAY (Western Australia) (8.35 p.m.)—I move Democrat amendment (10) on sheet 4160 revised:
(10) Schedule 1, item 7, page 6 (after line 30), insert:

Note: A State or territory law in respect of harsh, unjust or unreasonable termination is not intended to be

excluded to the extent that it provides a remedy to persons who are not employees. For example, a State or territory law that deems a person who is not an employee to be an employee and gives them a remedy in respect of harsh, unjust or unreasonable termination, is not intended to be excluded.

Amendment (10) is a note and, as noted earlier, many of the state unfair dismissal regimes have deemed certain groups of workers to be employees. That is actually a very important point. When we try to address the issue of the definition of ‘employee’, we of course recognise that we are not operating in a vacuum. Many of the states—I suspect all of them, but I cannot recall having gone through all their laws—have introduced legislation which defines employees and in some cases much more inclusively than others. The Democrats think that, if you are going to move towards a unitary system, sooner or later you are going to have to address this issue. That has ramifications far beyond unfair dismissals law, and I suspect far beyond workplace relations law. If we cannot get opposition and government support on a definition of ‘employee’, we would at the very least like to reinforce that the bill enables employees who are considered as such under state unfair dismissal legislation but not under federal legislation to access the state regime as they do at present. The note to amendment (10) confirms that that would be so.

Senator JACINTA COLLINS (Victoria) (8.36 p.m.)—Labor understand that the Democrats are trying to close off all the ‘ifs’ and ‘buts’ that the government’s flawed plan has left wide open. This particular case highlights my earlier point that the state jurisdictions are important for a whole raft of industrial relations issues beyond unfair dismissals. That the Democrats need to address this
issue in this bill highlights that point again. The state jurisdictions have developed their own particular formulas for dealing with these issues. Whilst on the one hand you can seek to represent that in this bill, it still leaves a fundamental fact: many of these industrial issues will remain at the state level because this bill simply deals with unfair dismissals. These often sit with other industrial problems too, which the state jurisdictions will still deal with. Labor simply do not accept the whole foundation of the government’s approach to this issue and therefore we do not see the merit in tinkering with it, although we support the Democrats’ sentiments in this area.

Senator ABETZ (Tasmania—Special Minister of State) (8.38 p.m.)—The amendment proposes to insert a legislative note confirming that persons who are deemed employees for the purposes of state or territory unfair dismissal laws but who are not employees for the purposes of federal unfair dismissal laws will continue to access those state or territory laws. We believe that the scope of the bill is clear and that it does not affect state laws that provide for deemed employees. This is because the Workplace Relations Act applies only to workers who satisfy the common law definition of ‘employee’. Workers deemed to be employees by legislation are not common law employees. The government believe the amendment is unnecessary and will be voting against it.

Question negatived.

Senator MURRAY (Western Australia) (8.39 p.m.)—by leave—I move Democrat amendments (16) to (20), (22), (25) and (26) on sheet 4160 revised:

(16) Schedule 2, item 4, page 12 (line 1), omit “small businesses”, substitute “trivial or vexatious claims”.

(17) Schedule 2, item 4, page 12 (lines 7 and 8), omit paragraph 170CEC(1)(b).

(18) Schedule 2, item 4, page 12 (lines 32 to 35), omit “In deciding whether to hold a hearing, the Commission must take into account the cost that would be caused to the employer’s business by requiring the employer to attend a hearing.”.

(19) Schedule 2, item 4, page 13 (line 5), at the end of paragraph 170CEC(5)(a), add “or may invite the employee, in the time specified in the notice, to be heard before the Registrar or Commissioner without the need for the employer to be present, so long as the employer has the right to provide any further information that is relevant to whether this section requires the order to be made”.

(20) Schedule 2, item 4, page 13 (after line 7), at the end of section 170CEC, add:

Note: An employer shall not be required to attend before the Commission merely because an election is made by an employee under this section.

(22) Schedule 2, page 13 (after line 28), after item 5, insert:

5A At the end of section 170CG

Add:

(4) If the Commission is satisfied that the matters listed in paragraphs (3)(da) and (db) impacted on the procedures followed by the employer in effecting the termination then the termination is not harsh, unjust or unreasonable on the ground of mere procedural defect if the termination was otherwise fair in substance.

(25) Schedule 2, item 15, page 14 (line 30), omit “(about dismissal of applications relating to small businesses)”.

(26) Schedule 2, item 16, page 15 (lines 4 and 5), omit “(about dismissal of applications relating to small businesses)”.

We also oppose schedule 2 in the following terms:

(13) Schedule 2, item 1, page 11 (lines 6 to 13), to be opposed.

(14) Schedule 2, item 2, page 11 (lines 14 to 23), to be opposed.
(15) Schedule 2, item 3, page 11 (lines 24 to 29), to be opposed.
(21) Schedule 2, item 5, page 13 (lines 8 to 28), to be opposed.
(23) Schedule 2, items 6 and 7, page 13 (lines 29 to 36), to be opposed.
(24) Schedule 2, items 8 to 13, page 14 (lines 1 to 20), to be opposed.

This is one of those schedules that has a few sweet spots but there are other areas that you want to knock off. We have pretty well gutted schedule 2 because it is an attempt to revisit some of the areas which try to differentiate the rights of employees in small business from those in larger businesses. The Senate has accepted that in some circumstances you should do that—for instance, there are provisions where you take into account the size and sophistication of the business concerned—so it is not a hard and fast rule in the absolute sense. We support, though, further restrictions on vexatious and frivolous applications for all business, not just small business. It is our view that you should apply a consistent measure of that kind across businesses. I understand from the remarks of the Labor Party that they have sympathy for some ability to dismiss applications. Even they probably find aspects of schedule 2 acceptable.

Senator JACINTA COLLINS (Victoria) (8.40 p.m.)—As Senator Murray indicated, there are potentially some aspects of schedule 2 that we may have considered reasonable in other circumstances. I stress again, though, that in the circumstances of this bill we cannot support these measures. That would include the alternative amendments the Democrats propose to deal with them.

Senator ABETZ (Tasmania—Special Minister of State) (8.41 p.m.)—These Democrat amendments would remove those sections of the bill that benefit small business employers. For small business, the current unfair dismissal arrangements, comprising the federal system and five separate state regimes, add $1.3 billion annually to the cost of running a small or medium sized business. This bill would assist small business by reducing financial costs, increasing certainty of outcomes and resolving claims faster. It is a pity that non-government senators are still not prepared to accept that Australia’s small business sector has special and added burdens imposed by unfair dismissal laws. The government believes that small businesses will benefit greatly from a national approach to handling unfair dismissal claims, and it was initially prepared to accept these amendments to the bill. In doing so, the government was conscious that this would represent a significant shift from the government’s preferred position. Despite the government’s offer to defer changes to the operation of unfair dismissal laws for small business, the Democrats have continued to insist on other significant amendments that would change the way the federal law has operated for the past eight years. As the Democrats will not make compromises in kind, the government will insist on schedule 2 of the bill as originally drafted. The Industrial Relations Commission should be required to assess business size and sophistication when considering any procedural defects affecting a dismissal or fixing an appropriate remedy for an unfair dismissal. The government does not accept any of the proposed Democrat amendments regarding small business.

The TEMPORARY CHAIRMAN (Senator Watson)—As a matter of procedure, the Senate will be required to take two votes. The question is that amendments (16) to (20), (22), (25) and (26) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that schedule 2 stand as printed.

Question agreed to.
Senator MURRAY (Western Australia) (8.43 p.m.)—I move Democrat amendment (32) on sheet 4160 revised:

(32) Schedule 3, page 18 (after line 5), after item 8, insert:

8A At the end of section 170CG
Add:

(5) In determining whether circumstances meet the requirements of subsection (4), the Commission must have regard to whether procedures followed by the employer were in accordance with an industrial agreement or any selection criteria agreed to with the employees and approved by the Commission prior to the terminations occurring.

We also oppose schedule 3 in the following terms:

(27) Schedule 3, item 2, page 17 (lines 8 and 9), to be opposed.

(28) Schedule 3, item 4, page 17 (lines 14 to 16), to be opposed.

(29) Schedule 3, item 5, page 17 (lines 17 and 18), to be opposed.

(30) Schedule 3, item 6, page 17 (lines 19 to 22), to be opposed.

(31) Schedule 3, item 7, page 17 (lines 23 to 25), to be opposed.

Many of the items we oppose in schedule 3 relate to items in schedule 2, but we support items relating to employees’ conduct and the impact on the health and safety of others, taking into account employees’ conduct in determining compensation and taking into account income earned between termination and reinstatement. For the record, the Democrats strongly support the provision in the bill that seeks to make reinstatement the primary remedy. I suspect that is a view shared across the chamber.

Senator JACINTA COLLINS (Victoria) (8.44 p.m.)—As I have indicated previously, whilst some of the Democrat amendments would in other circumstances attract Labor’s support for this bill, we oppose these measures outright.

Senator ABETZ (Tasmania—Special Minister of State) (8.44 p.m.)—The Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2] currently provides that redundancy shall not amount to unfair dismissal, unless there are exceptional circumstances. This provision as currently drafted would allow employers to focus on operating as efficiently as possible, particularly in a downturn, without the disincentive of defending unfair dismissal claims. The provision also contains appropriate safeguards. The commission would have a broad discretion in deciding whether any particular circumstances are exceptional.

The explanatory memorandum gives guidance as to the meaning of ‘exceptional circumstances’. It provides that an example of an exceptional circumstance could be where an employer used an unfair process to select employees for redundancy. The amendment proposed by the Democrats would provide that, when determining whether circumstances are exceptional, the commission must have regard to whether procedures followed by the employer were in accordance with an industrial agreement or any selection criteria agreed to with the employees and approved by the commission. The government believes that this amendment is overly prescriptive but was prepared to agree to the amendment if it would have facilitated passage of the bill. The government believes that the Democrat amendment would only serve to add further complexity to the law and will be voting against it.

The TEMPORARY CHAIRMAN—The question is that schedule 3 stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that amendment (32) be agreed to.
Question negatived.

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

Question agreed to.

Bill agreed to.

Bill reported without amendment, report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (8.47 p.m.)—I move:
That this bill be now read a third time.

Question put.

The Senate divided. [8.52 p.m.]

(The Deputy President—Senator J.J. Hogg)

Ayes........... 30
Noes........... 34
Majority........ 4

AYES

Abetz, E. Barnett, G.
Boswell, R.L.D. Brandis, G.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleson, 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, I. Macdonald, J.A.L.
Mason, B.J. McKaun, J.J.
Payne, M.A. Santoro, S.
Scullion, N.G. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E. Watson, J.O.W.

NOES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Buckland, G. * Campbell, G.
Carr, K.J. Cherry, J.C.
Collins, J.M.A. Cook, P.F.S.
Crossin, P.M. Denman, K.J.
Evans, C.V. Forschaw, 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.
McLucas, J.E. Moore, C.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D. Sherry, N.J.
Stephens, U. Stott Despoja, N.
Webber, R. Wong, P.

PAIRS

Calvert, P.H. Ray, R.F.
Hill, R.M. O’Brien, K.W.K.
Patterson, K.C. Faulkner, J.P.

* denotes teller

Question negatived.

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

MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2003

MIGRATION LEGISLATION AMENDMENT (MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003

Second Reading

Debate resumed from 8 October 2003, on motion by Senator Kemp:

That these bills be now read a second time.

Senator SHERRY (Tasmania) (8.56 p.m.)—The Senate is considering two bills that propose significant changes to the current regulatory system that applies to migration agents. The Migration Agents Registration Application Charge Amendment Bill 2003 is a straightforward proposal dealing with the registration fee applicable to registered agents who change their status from non-commercial to commercial. It is supported by the Labor opposition. In its original form, the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 generated considerable concern in the industry and was sharply criticised by all
members of the Senate Legal and Constitutional Legislation Committee, including the three Liberal-National Party members of that committee.

I note that the Minister for Citizenship and Multicultural Affairs, Minister Hardgrave, has considered aspects of the original proposals, resulting in the announcement of some 39 government amendments to his own legislation. That is a significant backdown in anyone’s terms and it goes a long way towards meeting Labor’s concerns. However, it does not reflect well on the minister’s initial refusal to come to terms with concerns conveyed to him at the time by the opposition and by the board of the Migration Agents Regulatory Authority, amongst others.

To put this bill into its proper context it is important to first consider briefly the history of the current regulatory system and of the industry regulator, MARA. It is true to say that the activity of unscrupulous migration agents has been a longstanding concern for those of us on the Labor side of politics. We recognise that visa applicants are particularly vulnerable to exploitation by rip-off merchants, given the complexity of our migration program, the lack of knowledge and the tendency of some operators to claim to have influential contacts within, or special influence over, those who run the migration program. We see that unscrupulous operators represent a threat to the integrity of our rules based immigration system. Thus there is both a consumer protection and a program integrity rationale for regulating the migration advice industry.

Labor first introduced a form of compulsory registration for agents in the form of the Migration Agents Registration Scheme over a decade ago. Subsequently, the Liberal-National Party government abolished MARS and, in March 1998, replaced it with the current form of statutory self-regulation. Under this system the industry professional association, the Migration Institute of Australia, acts as the regulator under powers delegated to it by the parliament. Essentially it considers applications for the registration of new agents, oversees the continuing professional education requirements for existing agents and deals with complaints against registered agents.

It is important to understand two aspects of the creation of MARA. The first is that the then minister for immigration, Mr Ruddock, saw it as the precursor to complete voluntary self-regulation. This is something which the Labor Party is implacably opposed to. The second is that its creation was the outcome of a deal in late 1997 between the Liberal-National Party government, the Democrats and Independent senators. Given this history, it is somewhat paradoxical that the lead-up to the debate on the current legislation has seen the government posturing as the enemy of rogue agents while simultaneously seeking to undermine and grab back the power from the very regulator that it created in 1998.

The history of the current bills goes back to the review of the regulatory system that the government commissioned in September 2001. That review was officially called the review of statutory self-regulation of the migration advice industry, and it reported to the government in July 2002. The report of the review panel is commonly referred to as the Spicer report. The review panel found that the industry was not ready for voluntary self-regulation as advocated in the past by the former minister, Mr Ruddock, and recommended that MARA continue on an indefinite basis. Legislation to do just that was passed by the parliament with the Labor opposition’s support, as we wanted to give MARA the chance to get on with the job. Recommendation 16 of the review was as follows:
To support the integrity of the migration and humanitarian programs, improve the monitoring of agents and develop more effective means of sanctioning agents who lodge high numbers of vexatious, unfounded or incomplete applications.

It is relevant to note that the specific mechanisms for monitoring and sanctioning agents that the government has proposed were not developed by the independent panel that conducted the review or by MARA itself. They were purely the product of the department and were seen by many as an attempt by the department and the minister to gain themselves increased power at MARA’s expense. From the outset Labor’s shadow minister, Mr Laurie Ferguson, indicated to the minister that, while the Labor opposition supported firm action against those agents who were abusing the system, there were grave misgivings about the Liberal-National Party’s original proposals.

Labor’s concerns revolved around the following fundamental issues: firstly, the intention to profile agents with a complete caseload as small as four; secondly, the definition of a case and the associated notification requirement, where failure to notify DIMIA of an agent’s involvement in a case constitutes an offence; thirdly, the lack of transparency in the handling of agents identified as having an unacceptably high rejection rate, with the minister effectively acting as judge and jury and MARA being reduced to rubber-stamping a predetermined penalty; and, fourthly, the minister’s discretion to overturn a sanction imposed on an agent without being required to give a reason for doing so. In addition, the Labor opposition was concerned that the original bill took no action on the issue of professional indemnity insurance, which is optional at present, or on Mr Spicer’s recommendation that overseas agents be brought within the regulatory system.

Unfortunately, these concerns were ignored by the minister, and the bill was passed by the House of Representatives without amendment—I stress that: it was passed without amendment. Yet this evening we are considering some 39 government amendments. So the bill has moved from the House of Representatives, into the Senate, and through the Senate Legal and Constitutional Legislation Committee and out the other side, and the government is now proposing 39 amendments.

On 8 October the bill was referred to the Senate Legal and Constitutional Legislation Committee for detailed examination and report by 25 November last year. The committee received 21 submissions in the short period open to stakeholders, with all bar DIMIA expressing concern at the government’s proposals. The committee held a public hearing on 27 October and took evidence from MARA, the department, a community legal centre and a lawyers group. In its report on the bill the committee unanimously recommended that the government proposals:

... not proceed, on the basis that the measures are insufficiently targeted to vexatious agents and that the Bill grants complete discretion to the Minister, without detailing the basis on which such discretion will be exercised.

Not surprisingly, this devastating finding—as I said, unanimously presented by the Senate Legal and Constitutional Legislation Committee—led the Liberal-National Party government to take the bill off the Senate legislative program late last year while the minister belatedly sought to talk with the Labor opposition. The Labor opposition has been working constructively to resolve the impasse facing the bill because it is committed to having action taken against agents—and I stress that they are in the minority—who have been clogging up the system with large numbers of vexatious, incomplete and unfounded visa applications and appeals. At the
same time, Labor has insisted that agents are entitled to a fairer and more transparent mechanism than that put forward by the Liberal-National Party government.

The government has been forced into a major backflip and is now proposing 39 amendments to its own bill. In summary, it has agreed to increase the threshold figure before agents can be profiled from four completed cases in six months to 10 completed cases; clarify that the notification and profiling system only includes cases where an agent agrees to represent a visa applicant, thus excluding other forms of immigration assistance, such as where an agent merely gives advice to an applicant; extend by seven days the period that agents have to respond to a show cause notice from the minister; specify by regulation, which will be disallowable, the factors the minister must consider in considering an agent’s response to a show cause notice; replace the inflexible mandatory sanction provisions with a power for MARA to determine an appropriate sanction in the circumstances of the case; remove the minister’s power to remove a sanction once imposed by MARA; require agents to have professional indemnity insurance as a condition of their registration, as the Labor opposition has been advocating for some months; and empower MARA to publish sanction decisions, even when such decisions have been appealed and to list on its web site those agents who have ceased to be registered, voluntarily or otherwise. While these changes do not fully cover the range of Labor’s concerns and our preferred position, we will be supporting the passage of the bills in their amended form.

The Labor opposition does remain concerned that other issues impacting on vulnerable consumers and program integrity have still not been addressed by the Liberal government. We remain to be convinced that the department gives sufficient priority to the exercise of its own powers in this area. The reality is that MARA’s powers are limited to the imposition of non-criminal sanctions on registered agents. It is the department and not MARA that has the power to investigate and prosecute individuals engaged in unregistered practice, people trafficking, migration fraud and other offences under the Migration Act. The number of such cases actually brought to court bears little relation to the Liberal government’s rhetoric about the risks facing our migration system, so there is a need to do much more in that area, using the powers that are already available to it and to deal with employers who knowingly and often repeatedly employ illegal workers.

We remain concerned about both the open-ended nature of the system of ministerial discretion and its use by the former minister, Mr Ruddock. These matters of course are the subject of ongoing examination by a Senate committee, so I do not intend to canvass them in any detail at this point. I simply note that, firstly, the government has largely refused to provide that committee with access to departmental material on cases that have been raised in the parliament and the media. Secondly, the data provided to the committee, which was subsequently released to the public, clearly shows that a number of individuals who are not registered migration agents were the source of multiple requests for ministerial intervention on behalf of unsuccessful visa applicants. At the very least, that sets a bad example.

We are disappointed that action has yet to be taken to bring overseas agents within the scope of a regulatory scheme. The Spicer report noted that as many as 2½ thousand offshore agents regularly lodge visa applications on behalf of clients at Australian overseas posts. Most of these are travel agents, lawyers and accountants who have branched out to provide immigration assistance to clients. In some countries, such as the UK,
China, India, the Philippines and the former Yugoslavia, such agents are reportedly responsible for the lodgment of up to 60 per cent of all visa applications received by the posts concerned.

Currently the Migration Act does not allow non-Australian citizens to register with MARA, even if they wish to do so. There are complex issues involved in extending the reach of MARA to these countries. It is most unlikely that the Australian parliament could make it an offence for overseas agents who are unregistered to provide immigration assistance offshore for a fee. It would be possible, however, to require that overseas posts only deal with either visa applicants or registered agents authorised to act on their behalf. That matter was canvassed in the Spicer report in July 2002, almost two years ago. The opposition has been repeatedly told by the current government that a discussion paper on the matter is being prepared as a prelude to possible legislation or other action. To date, this discussion paper—if it exists—has not seen the light of day, and that is just not good enough.

The other matter that requires attention is the issue of audited trust accounts for clients’ funds. Lawyers have long been subject to detailed requirement in this area to protect their clients. While not all migration agents take funds from clients that would be subject to trust account provisions, those who do should be required to do so on a consistent and accountable basis. The Liberal government and MARA should address this matter as a matter of priority and make necessary changes to the Migration Act and/or the code of conduct governing registered agents.

In concluding, I wish to reiterate that the Labor opposition, following the proposed 39 amendments to the bills, is supporting the passage of these bills. We do not claim the provisions dealing with vexatious, incomplete and unfounded visa applications are perfect. We acknowledge that concerns remain. MARA, in particular, would clearly prefer a greater role in the process and wider discretion. Some agents fear that the provisions will have unforeseen consequences. That remains to be seen. What is clear is that there is a problem with a minority of agents who have been clogging up the system with multiple vexatious, incomplete and unfounded applications. I might say that some of the evidence I saw at the recent committee hearings stated that agents were at times charging very significant fees for some of these activities. The take-home message is that firm action must be taken against those particular agents. Labor will take a close interest in how effectively, speedily and sensitively the department and MARA use the provisions of these particular bills.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.13 p.m.)—There are two bills before us today—the Migration Agents Registration Application Charge Amendment Bill 2003 being what one might call the minor bill and the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 being the major bill. I will start with the smaller bill first. The Democrats support the Migration Agents Registration Application Charge Amendment Bill 2003 as it stands. It is a simple bill which seeks to introduce a new charge for migration agents who register with the industry regulator—known as MARA or the Migration Agents Registration Authority—to provide immigration assistance on a non-commercial basis but who then give immigration assistance on a commercial basis during the course of their registration period. The charge requires them to pay the higher commercial fee if they commence giving immigration assistance on a commercial basis. I think that is quite appropriate.
The Migration Agents Registration Application Charge Act was introduced in 1997 and was actually one of the very first pieces of legislation I dealt with when I came into the Senate. This whole area, therefore, is one that I have followed with a lot of interest ever since. The entire area of migration agent regulation is one that, in a significant way, stems from those legislative changes in 1997. Whilst the Democrats were crucial to those changes going through, I have never suggested that it is a perfect system. It is very much one that is still evolving and one that I believe will need continued monitoring, continued assessment and probably further changes down the track.

I note with support the comment in the minister’s second reading speech which states:

The Government and the MARA are committed to keeping down non-commercial agent fees as these agents normally work as volunteers in community organisations, assisting the most vulnerable clients.

That is a view that the Democrats very much share and is one of the reasons that I negotiated with the then minister, Minister Ruddock, to ensure that fees for non-commercial agents were lower than those initially proposed. In my view even the current amount is often a significant burden for community legal centres and for non-commercial migration agents who provide an incredibly significant service, often to people who otherwise would get no assistance, in an area which should be acknowledged is often very complicated.

The Migration Act is quite complicated, very regularly subject to change and also often misunderstood. People are quite vulnerable to making mistakes in identifying what their opportunities, their options and their entitlements may be. Sometimes those entitlements are time specific—they need to make an application within a certain period of time—and if they do not have the assistance of somebody who knows the Migration Act and its many regulations then they can very easily come a cropper. I imagine many members of parliament have had contact with individuals who have come a cropper because of the complexity and some of the constraints and hurdles of the Migration Act and its regulations and procedures.

I say that to indicate not just the importance of non-commercial migration agents but also more broadly the importance of migration agents as a whole. One thing that concerns me about the thrust of the major piece of legislation here, the migration agents integrity measures bill, is the underlying assumption that there is a widespread problem with the behaviour of migration agents. Often this can be in the eye of the beholder and depends on which piece of rhetoric you point to as to whether or not you believe it is a fair or unfair categorisation. I certainly believe there has been an unhelpful attitude continuing in relation to migration agents—as though there is a large number of dubious operators out there deliberately exploiting vulnerable people and charging excessive fees. There is no doubt that there are a small number who behave inappropriately, there is no doubt that there are a small number who are spectacularly incompetent and there is no doubt that there are a small number who overcharge, but, as with any profession, the behaviour of a small number should not be used to cast a general slur across the entire profession, particularly when—it should be remembered—it is a profession that is relatively new in terms of its regulatory phase. This current phase of legislative regulatory regime has been in place for only six years or so; it is still developing and still evolving.

In that context I do not think it is terribly helpful to be placing unrealistic or unfair pressure on the behaviour of migration agents in general and, therefore, on the regu-
latory authority, the MARA. They have a difficult job with constrained resources. In that context I think they should be given encouragement rather than unfair pressure. That is not to say that they should be above criticism, of course. I am equally willing to criticise where appropriate, but I do think they have been subjected to unfair criticism to some extent from some quarters, including from some in government and some in the Labor opposition. I do not think that is helpful in terms of the general goal, which I am sure we all share, which is to ensure better practice on behalf of migration agents and better awareness amongst people who might need to use migration agents.

Apart from being a member of the committee that inquired into this legislation, I am also a member of the current Senate Select Committee on Ministerial Discretion in Migration Matters. That committee is still to report so I will not go into this in detail. I think there was a habit by some people giving evidence before that committee and some of those questionnaire to equate people who were potentially charging fees to help people with requests for ministerial discretion with migration agents. Often it seemed from anecdotal evidence given to the committee that if there was a problem it was more likely to be in the area of people who were not actually migration agents and who were holding themselves out as being able to do special favours. It is important that that area is focused on and tightened up. It is also important to emphasise the fact that the tightening up relates to misbehaviour not by migration agents but rather by others who hold themselves up as having expertise or influence they do not have.

The other aspect of this bill that initially caused a lot of concern to people across all political parties was the extra power it potentially placed in the hands of the migration minister. I am not necessarily impugning the minister, the government or the department in their motive for gaining these extra powers. I think there is a rationale behind putting forward this proposal. But it is quite clear that the bill as originally proposed would have put excessive power in the hands of the minister and, in effect, put the MARA—a supposedly independent regulator—in an impossible position where it would basically be automatically required to carry out the consequences of a verdict arrived at by the government minister. That would be inappropriate for a whole range of reasons.

In general, the Democrats have been concerned about the increasing power of the
migration minister in a whole range of areas across the Migration Act, and extending that power further caused us great concern. This is another example of significant change to a bill as a consequence of Senate committee inquiries—and it is a credit to all parties involved, to the government and to the Senate as a whole. The committee inquiry was extremely valuable in getting to the nub of some of the problems with the set-up as it was first proposed. It did so via questioning from senators from all parties—Labor, Liberal and the Democrats—and input from a lot of people who are practitioners in this area.

There is perhaps a habit of assuming that many migration agents are somehow rather dodgy, as there is a habit by some people of unfairly inferring that many lawyers are dodgy, when that is not usually the case. As I am sure you would agree, there might be a small minority of lawyers who are dodgy, but most of them are engaged in their work for the right reasons. Similarly it is the case with migration agents, as we saw from people appearing before this committee. Indeed, I have seen it in many other committees I have been involved in. We recognised the desire for a better system to identify inappropriate behaviour in migration agents and to penalise agents who are clearly acting inappropriately and vexatiously but to ensure appropriate checks and balances. That is the aim of this legislation, and I think it is fair to say that that is a shared goal across the board of the industry, the government and other interested parties such as the Democrats and the Labor Party. We all have a similar goal—an industry that operates as effectively as possible, provides the best services possible and enables the regulator, the MARA, to identify vexatious agents effectively and as quickly as possible whilst enabling a fair system with checks and balances. That is what we are trying to get out of this.

I am certain that whatever we end up with will not satisfy everybody 100 per cent, probably not even 90 per cent, but that what we do end up with will be at least an attempt to improve on where things are at now. As I said earlier, this system has been in place for six years. It is still very much evolving, and I think it would be unrealistic to expect it to be made perfect within the first few years of its operation. We can expect to need to make further refinements over the next few years. Ongoing refinements, as referred to by Senator Sherry, are still needed and have been recommended by reviews that have already happened. I think the government have indicated that they are still looking at making further changes, such as in relation to agents operating offshore. We will need to keep working on this area, but there is no doubt that the amendments put forward as a consequence of the committee report and the further amendments circulated by the Democrats will address some of the core problems identified by the committee. I do not think they address all of them, but I am concerned that if we do not get a system through the Senate this time around then the undercurrent of that antagonistic approach to migration agents I mentioned earlier might get the upper hand in the political dynamics and we might get a more punitive system than the system proposed in the bill.

One key issue—and I will speak to this a little bit further in the committee stage—the Democrats were concerned about was ensuring that there was still scope for the MARA to make a decision for itself about whether or not the behaviour of an agent was such that the agent required sanction or disciplinary action. That is something I believe is important to the members of the MARA. I think that should be emphasised from the point of view not of the parliamentarians considering this issue but of the people who are active in the migration industry, in the MARA and the
Migration Institute of Australia. The people involved in those organisations put in a lot of work as representatives of their profession, and they represent their profession not to enrich themselves in any way. I am quite certain that acting as advocates and representatives of their industry and their profession costs most of them a great deal in time taken out of their normal professional activities.

I think it needs to be acknowledged in this debate that the representatives of the MIA and the MARA have put a lot of work into not just this legislation but a lot of the other issues surrounding the matters that are touched on in this legislation, and they will continue to do so because, as I said, the issues are ongoing. The work that the MIA has put into engaging with the government and with all political parties on this issue to try to get an outcome that meets the goals that most of us share needs to be acknowledged.

A range of amendments have been circulated in my name on behalf of the Democrats that I will speak on in the committee stage. I indicate that the Democrats are willing to support these bills at the second reading stage because we support the principle, which is to attempt to get a more effective system in place to identify vexatious behaviour by migration agents and to ensure—and this is our aim, which we will be using to judge at the end of the process whether to support the bills at the third reading stage—that that process is fair, that it is sufficiently independent of government and that it is a system that will provide a fair go for migration agents and that they will not just be able to be railroaded by the minister. Not surprisingly there is a fear amongst some in the industry, in an area as politically contentious as migration, that some agents may be used purely as political scapegoats by the government of the day.

That fear is real. It does not matter whether the government says it is fair or not; it is a very real fear, based on the incredibly politicised nature that we all know migration law and practice can have. We only have to look at some of the criticisms that have been made time and again over recent years by the Minister for Immigration and Multicultural and Indigenous Affairs and the Attorney-General, past and present, about the activities of lawyers and agents involved in this area. The Democrats believe most of those criticisms have been very unfair and have misrepresented the situation. The fact is that the vast majority of advocates, lawyers and agents involved in the politically contentious areas in the Migration Act are not enriching themselves. They are usually working pro bono or at extremely low rates, trying to ensure that people have some scope for justice and fairness from the migration system. That is what is needed, and that is what those people are trying to deliver. They deserve support—not unqualified support but support in general—for what they are trying to do to ensure that there is still justice available in the migration law, which the Democrats believe is, in many cases, framed in a way that does not easily deliver justice. In fact, sometimes it is almost impossible to get justice out of it.

We need to ensure agents are not able to be politically persecuted and used as political scapegoats. We also need to ensure that that small number of people who are registered as agents and who are operating inappropriately are able to be weeded out. There is no doubt there could be improvement in that system. The Democrats support that goal. We will see how we go in the committee stage in making that goal a worthwhile reality.

Senator ABETZ (Tasmania—Special Minister of State) (9.33 p.m.)—As most senators know, I am an optimist, and there is the slim possibility of these migration bills
getting through tonight, so I will keep my
comments very brief. Suffice to say that I
thank honourable senators for their contribu-
tion. I agree with Senator Bartlett’s com-
ments in relation to the government taking
note of the Senate committee report, but
Senator Sherry could not help but make a
few political points about that. We are a con-
sultative government and, when the Senate
report came down, there was some merit in
some of the recommendations. We as a gov-
ernment are not ashamed to say that our leg-
islation can be improved from time to time
as a result of the Senate committee system
working. With great respect, I would have
thought that Senator Sherry, given last
week’s events, would not be in a particularly
strong position to argue about policy superi-
ority.

I simply thank the Democrats in particular
for their discussions with the minister’s of-
ICE and the cooperation that has allowed a
number of amendments to be agreed to
which will enhance the legislation and allow
its passage. The government has a number of
amendments, and the reasons and rationale
for that are detailed in the supplementary
explanatory memorandum. I do not seek to
canvass that further, other than to commend
the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

MIGRATION AGENTS REGISTRATION
APPLICATION CHARGE AMENDMENT
BILL 2003

Bill—by leave—taken as a whole.

Bill agreed to without amendment or re-
quests.

MIGRATION LEGISLATION
AMENDMENT (MIGRATION AGENTS
INTEGRITY MEASURES) BILL 2003

Bill—by leave—taken as a whole.

Senator ABETZ (Tasmania—Special
Minister of State) (9.36 p.m.)—I table a sup-
plementary explanatory memorandum relat-
ing to the government amendments to be
moved to this bill. This memorandum was
circulated in the chamber on 9 March 2004. I
seek leave to consider amendments (1) to
(18), (20) to (32), and (34) to (39) together.

Leave granted.

Senator ABETZ—I move:

(1) Schedule 1, page 8 (after line 4), after item
36, insert:

36A Paragraph 287(2)(h)
Omit “under paragraph 303(c)”.

(2) Schedule 1, page 8 (after line 12), after item
38, insert:

38A After subsection 287(3)
Insert:

(3A) The Authority may publish, in the
prescribed way, a list of the names of
former registered migration agents,
their former migration agent
registration numbers and the date
they ceased to be registered. The
Authority must remove a person’s
details from the list at the end of the
prescribed period.

(3) Schedule 1, item 40, page 9 (after line 26),
after subsection 288(6), insert:

Proceedings finalised about previous
registration

(6A) If:

(a) the applicant has been registered
at some time before making the
application; and

(b) the Authority made a decision to
suspend or cancel the applicant’s
registration; and

(c) the applicant made an applic-
ation (the review application)
for review of the decision under
the Administrative Appeals
Tribunal Act 1975 or for judicial
review of the decision;
then the Authority must not consider the registration application unless it is satisfied that all proceedings (including any appeals) resulting from the review application have been finalised.

(4) Schedule 1, page 11 (after line 19), after item 46, insert:

46A Subsection 289(4)
Omit “subsection 300(3)”, substitute “subsection 300(6)”.

(5) Schedule 1, page 13 (after line 2), after item 55, insert:

55A After section 291
Insert:

291A Applicant must not be registered if suspension would be in effect
If:
(a) an applicant has been registered (the previous registration) at some time before making the application; and
(b) the Migration Agents Registration Authority decided to suspend the previous registration (whether or not that decision was stayed); and
(c) the previous registration ended on or after the suspension decision;
then the applicant must not be registered during a period in which the previous registration would have been suspended had the previous registration not already ended.

Example 1: A registered migration agent’s registration is suspended for a period. The agent is deregistered under section 302 so the suspension of the registration ends. The agent cannot be re-registered until the suspension period ends.

Example 2: The Migration Agents Registration Authority suspends a registered migration agent’s registration. The agent applies for review of the decision and a stay order is made in relation to the decision. The agent continues to practise, while the stay order is in force, until the agent’s registration ends. Subsection 288(6A) prevents the agent from being re-registered until the review proceedings are finalised. The agent cannot be re-registered if the suspension decision is affirmed on review and the suspension would not have ended (had the registration continued).

Example 3: Under section 300, a registered migration agent’s registration is continued after the expiry day of the agent’s registration. The Migration Agents Registration Authority makes a decision to suspend the agent’s registration until the agent complies with a condition, and so the registration ends because of subsection 300(4). The agent cannot be re-registered until the agent complies with the condition.

(6) Schedule 1, item 56, page 13 (lines 3 and 4), omit the item, substitute:

56 Section 292
Repeal the section, substitute:

292 Applicant must not be registered if registration cancelled in past 5 years
An applicant whose registration has been cancelled under section 303 or 306AG must not be registered within 5 years of the cancellation.

(7) Schedule 1, page 13 (after line 8), after item 58, insert:

58A After section 292A
Insert:

292B Applicant must not be registered unless he or she holds appropriate professional indemnity insurance
(1) An applicant must not be registered unless the Migration Agents
Registration Authority is satisfied that he or she has professional indemnity insurance of a kind prescribed by the regulations.

(2) To avoid doubt, this section applies to all applicants (not just first time applicants).

(8) Schedule 1, item 63, page 13 (lines 19 and 20), omit the item, substitute:

63 Section 300
Repeal the section, substitute:

300 Automatic continuation of registration
When agent’s registration is automatically continued

(1) Subsection (4) applies to continue a registered migration agent’s registration beyond the last day (the expiry day) of the agent’s registration if, before the end of the expiry day:

(a) the agent made a registration application; and

(b) the agent paid the registration application fee (if any) in respect of the application; and

(c) the Migration Agents Registration Authority had not decided the application.

Exception—suspension

(2) However, subsection (4) does not apply to continue the agent’s registration if, before the end of the expiry day, the Authority made a decision to suspend the agent’s registration, unless:

(a) the suspension had been completed before the end of the expiry day; or

(b) there was a decision (other than a stay order) of the Administrative Appeals Tribunal or a court in force, immediately before the end of the expiry day, to the effect that the agent’s registration is not suspended or cancelled.

Period of continuation of registration

(4) The agent’s registration is taken to continue after the expiry day until the earliest of the following:

(a) the Authority decides the registration application;

(b) the Authority decides to suspend the agent’s registration;

(c) the Authority decides to cancel the agent’s registration;

(d) the end of the period of 10 months beginning on the day after the expiry day.

Application granted if no decision within a certain period

(5) If, before the end of the period of 10 months beginning on the day after the expiry day, the Authority has not:

(a) decided the registration application; and

(b) decided to suspend the agent’s registration; and

(c) decided to cancel the agent’s registration;

then the application is taken to have been granted at the end of that period.

Exception—cancellation

(3) Subsection (4) also does not apply to continue the agent’s registration if, before the end of the expiry day, the Authority made a decision to cancel the agent’s registration, unless:

(a) there was a decision (other than a stay order) of the Administrative Appeals Tribunal or a court in force, immediately before the end of the expiry day, to the effect that the agent’s registration is not suspended or cancelled; or

(b) there was a decision of the Administrative Appeals Tribunal or a court in force to the effect that the agent’s registration is suspended, and the suspension had been completed before the end of the expiry day.
When registration takes effect

(6) If the Authority grants the registration application, or the registration application is taken to have been granted under subsection (5), the registration is treated as having taken effect at the end of the expiry day.

Example: An agent’s registration is due to end on 31 October (the expiry day). On 20 October the agent applies to be registered again. The Authority has not decided the application by the end of 31 October.

The agent’s registration continues automatically past 31 October until the Authority decides the application.

On 15 November the Authority grants the application. The new 12 month registration is treated as having taken effect at the end of 31 October.

When Authority makes decision

(7) For the purposes of this section, the Authority is taken to have made a decision even if the decision is later stayed.

(9) Schedule 1, item 68, page 14 (line 7), after “required to”, insert “caution a registered migration agent or”.

(10) Schedule 1, item 72, page 15 (line 13) to page 16 (line 15), omit subsections 305A(1) and (2), substitute:

(1) If a registered migration agent is given notice of a decision under section 303, then the Migration Agents Registration Authority:

(a) must as soon as possible make available in the prescribed way a statement that sets out the decision and specifies the grounds for the decision; and

(b) may prepare a statement about the decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the decision.

(11) Schedule 1, item 73, page 17 (line 4), omit subsection 305B(2).

(12) Schedule 1, item 75, page 19 (line 19), omit “is”, substitute “and the Authority’s decision are”.

(13) Schedule 1, item 75, page 20 (after line 32), at the end of section 306AC, add:

Minister to have regard to any matter prescribed by the regulations

(5) In deciding whether or not to refer a registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Minister must have regard to any matter prescribed by the regulations.

(14) Schedule 1, item 75, page 21 (after line 24), after subparagraph 306AE(1)(b)(i), insert:

(ia) on the disciplinary action to be taken against the agent if the Minister decides to refer the agent; and

(15) Schedule 1, item 75, page 21 (line 27), omit “14”, substitute “21”.

(16) Schedule 1, item 75, page 22 (after line 13), after subsection 306AF(2), insert:

(2A) The notice must be accompanied by a copy of any submission made to the Minister under subsection 306AE(1).

(17) Schedule 1, item 75, page 22 (line 22) to page 23 (line 13), omit section 306AG, substitute:

306AG Taking of disciplinary action

(1) If the Minister refers a registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Authority must:

(a) caution the agent; or

(b) suspend the agent’s registration; or
(c) cancel the agent’s registration.

Findings of fact

(2) In making its decision, the Authority must take the findings of fact made by the Minister in relation to the referral decision to be correct.

Matters Authority must take into account

(3) The Authority must take only the following matters into account in making its decision under subsection (1):

   (a) any written submission made to the Minister under subsection 306AE(1) by the agent;
   (b) the findings of fact made by the Minister in relation to the referral decision;
   (c) the grounds given by the Minister for the referral decision.

Natural justice hearing rule

(4) This section, section 306AE and sections 494A to 494D are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the decision the Authority is required to make under subsection (1) of this section.

Note: Section 306AE requires the Minister to give the agent an opportunity to make a submission before the Minister refers the agent for disciplinary action. Sections 494A to 494D relate to the giving of documents by the Minister under this Act.

Time of decision

(5) The Authority must make its decision under subsection (1) as soon as possible, but not later than 14 days, after receiving notice of the referral.

Note: Section 494C sets out when the Authority is taken to have received notice of the referral.

Notice to agent

(6) The Authority must give the agent written notice of its decision. The notice must set out the reasons for the decision.

(7) The decision takes effect at the time the agent is given written notice of it.

Note: Section 332H sets out when the agent is taken to have been given the notice.

(8) Schedule 1, item 75 (after line 13), after section 306AG insert:

306AGA Cautions or suspensions

Cautions

(1) If the Migration Agents Registration Authority cautions a registered migration agent under section 306AG, the Authority may set one or more conditions for the lifting of the caution.

Note: Particulars of cautions are shown on the Register: see section 287.

Suspensions

(2) If the Authority suspends a registered migration agent’s registration under section 306AG, the Authority may:

   (a) set a period of suspension of not more than 5 years; or
   (b) set a condition or conditions for the lifting of the suspension.

(3) If 2 or more conditions are set under paragraph (2)(b), one of them may be that at least a set period of suspension has ended.

(20) Schedule 1, item 75, page 24 (lines 24 to 26), omit section 306AJ, substitute:

306AJ Review by the Administrative Appeal Tribunal

(1) An application may be made to the Administrative Appeals Tribunal for review of a referral decision or a mandatory decision.
Timing rules for review of a referral decision

(2) However, an application for review of a referral decision may only be made:
   (a) after the mandatory decision is made as a result of the referral decision; and
   (b) within the period within which an application for review of the mandatory decision may be made.

(3) Accordingly, paragraph 29(1)(d) of the Administrative Appeals Tribunal Act 1975 does not apply to an application for review of a referral decision.

(21) Schedule 1, item 75, page 25 (lines 1 to 24), omit section 306AK, substitute:

306AK Stay orders

If the Administrative Appeals Tribunal or a court orders a stay of a decision under section 306AG to cancel or suspend a registered migration agent’s registration, it is taken to be a condition of the order that the prescribed supervisory requirements apply in relation to the agent during the period of the order.

(22) Schedule 1, item 75, page 25 (line 27) to page 26 (line 35), omit subsections 306AL(1) and (2), substitute:

(1) If a registered migration agent is given notice of a mandatory decision, then the Migration Agents Registration Authority:
   (a) must as soon as possible make available in the prescribed way a statement that:
      (i) sets out the mandatory decision; and
      (ii) sets out the referral decision to which the mandatory decision relates; and
      (iii) specifies the grounds for the referral decision; and
   (b) may prepare a statement about the mandatory decision and the referral decision and make it available to one or more groups of persons, or to one or more groups of persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the mandatory decision or the referral decision.

(23) Schedule 1, item 75, page 27 (line 21), at the end of paragraph 306AM(1)(c), add “or the mandatory decision”.

(24) Schedule 1, item 75, page 27 (line 23), omit subsection 306AM(2).

(25) Schedule 1, item 137, page 36 (lines 2 to 37), omit subsections 311C(1) and (2), substitute:

(1) If a former registered migration agent is given notice of a decision under section 311A, then the Migration Agents Registration Authority:
   (a) must as soon as possible make available in the prescribed way a statement that sets out the decision and specifies the grounds for the decision; and
   (b) may prepare a statement about the decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the decision.

(26) Schedule 1, item 142, page 39 (line 20), omit “is”, substitute “and the Authority’s decision are”.

(27) Schedule 1, item 142, page 39 (after line 1), at the end of section 311H, add:

(2) In deciding whether or not to refer a former registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Minister must have regard to any matter prescribed by the regulations.

(28) Schedule 1, item 142, page 39 (after line 33), after subparagraph 311J(1)(b)(i), insert:
(ia) on the period the former agent is to be barred from being a registered migration agent if the Minister decides to refer the former agent; and

(29) Schedule 1, item 142, page 40 (line 4), omit “14”, substitute “21”.

(30) Schedule 1, item 142, page 40 (after line 20), after subsection 311K(2), insert:

(2A) The notice must be accompanied by a copy of any submission made to the Minister under subsection 311J(1).

(31) Schedule 1, item 142, page 41 (lines 1 to 28), omit section 311L, substitute:

311L Taking of disciplinary action

(1) If the Minister refers a former registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Authority must bar him or her from being a registered migration agent for a period of not more than 5 years starting on the day that the Authority's decision takes effect.

Findings of fact

(2) In making its decision, the Authority must take the findings of fact made by the Minister in relation to the referral decision to be correct.

Matters Authority must take into account

(3) The Authority must take only the following matters into account in making its decision under subsection (1):

(a) any written submission made to the Minister under subsection 311J(1) by the former agent;
(b) the findings of fact made by the Minister in relation to the referral decision;
(c) the grounds given by the Minister for the referral decision.

Natural justice hearing rule

(4) This section, section 311J and sections 494A to 494D are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the decision the Authority is required to make under subsection (1) of this section.

Note: Section 311J requires the Minister to give the former agent an opportunity to make a submission before the Minister refers the former agent for disciplinary action. Sections 494A to 494D relate to the giving of documents by the Minister under this Act.

Time of decision

(5) The Authority must make its decision under subsection (1) as soon as possible, but not later than 14 days, after receiving notice of the referral.

Note: Section 322H sets out when the Authority is taken to have received notice of the referral.

Notice to agent

(6) The Authority must give the former agent written notice of its decision. The notice must set out the reasons for the decision.

(7) The decision takes effect at the time the former agent is given written notice of it.

Note: Section 322H sets out when the former agent is taken to have been given the notice.

(32) Schedule 1, item 142, page 41 (line 31), at the end of section 311M, add “or a mandatory decision”.

(34) Schedule 1, item 142, page 42 (line 19) to page 43 (line 25), omit subsections 311P(1) and (2), substitute:

(1) If a former registered migration agent is given notice of a mandatory decision, then the Migration Agents Registration Authority:

(a) must as soon as possible make available in the prescribed way a statement that:

(i) sets out the mandatory decision; and
(ii) sets out the referral decision to which the mandatory decision relates; and
(iii) specifies the grounds for the referral decision; and
(b) may prepare a statement about the mandatory decision and the referral decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the mandatory decision or the referral decision.

(35) Schedule 1, item 149, page 45 (lines 4 to 7), omit subsection 312A(1) (but not the penalty), substitute:
(1) If:
(a) a registered migration agent gives immigration assistance to a visa applicant in relation to the visa application; and
(b) the agent gives the assistance after having agreed to represent the applicant;
the agent must notify the Department in accordance with the regulations and within the period worked out in accordance with the regulations.

(36) Schedule 1, item 149, page 45 (lines 13 to 17), omit subsection 312B(1) (but not the penalty), substitute:
(1) If:
(a) a registered migration agent gives immigration assistance to a person in respect of a review application made by the person; and
(b) the agent gives the assistance after having agreed to represent the person;
the agent must notify the review authority concerned in accordance with the regulations and within the period worked out in accordance with the regulations.

(37) Schedule 1, page 55 (after line 12), after item 173, insert:

173A Application—list of former registered migration agents
The amendment made by item 38A applies in relation to persons ceasing to be registered migration agents either before or after the commencement of that item.

(38) Schedule 1, page 55 (after line 26), after item 175, insert:

175A Application—proceedings finalised about previous registration
Subsection 288(6A) of the Migration Act 1958, as inserted by item 40, applies in relation to suspension or cancellation decisions made after the commencement of that item.

(39) Schedule 1, page 56 (after line 13), after item 179, insert:

179A Application—automatic continuation of registration
The amendments made by items 46A and 63 apply in relation to expiry days that occur after the commencement of those items. However, those amendments do not apply in relation to suspension or cancellation decisions made before that commencement.

179B Application—no registration if suspension not completed
The amendment made by item 55A applies in relation to registration applications made after the commencement of that item. However, the amendment does not apply in relation to suspension decisions made before that commencement.

179C Application—no registration if cancellation in past 5 years
The amendment made by item 56 applies in relation to registration applications made after the commencement of that item (regardless of whether the cancellation occurred before or after that commencement).
The amendment made by item 58A applies in relation to registration applications made after the commencement of that item.

The amendments relate to the re-registration of migration agents who have previously been the subject of disciplinary action by the Migration Agents Registration Authority, professional indemnity insurance requirements disciplining migration agents who have engaged in vexatious activity, the publication of information about agents and clarifying the notification obligations of migration agents. I do not seek to delay the Senate any further. There has been a lot of discussion between the parties as to these amendments. A lot of these matters have also been canvassed in the Senate committee report. I commend them to the chamber.

Senator SHERRY (Tasmania) (9.37 p.m.)—I covered the government amendments in my speech in the second reading debate. It is not my intention to speak on the other two sets of government amendments other than to indicate that the Labor Party is supporting this set of amendments and the three remaining sets of government amendments. I have a few comments for the record that I will be making with respect to the set of Democrat amendments when we pass to those.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.38 p.m.)—by leave—I move amendments (1), (8), (9), (11), (15) to (24) and (28) to (31) on sheet 4193:

(1) Amendment (6), section 292, omit “or 306AG”, substitute “, 306AG or 306AGAC”.

(8) Amendment (12), omit “the Authority’s decision”, substitute “any decision of the Authority to discipline the agent”.

(9) Amendment (13), subsection 306AC(5), omit “for disciplinary action”, substitute “under this section”.

(11) Amendment (14), subparagraph 306AE(1)(b)(ia), omit “to be”, substitute “that may be”.

(15) Amendment (17), omit the heading to section 306AG, substitute:

306AG Migration Agents Registration Authority’s decision after a referral under section 306AC

(16) Amendment (17), subsection 306AG(1), omit “for disciplinary action”, substitute “under section 306AC”.

(17) Amendment (17), at the end of subsection 306AG(1), add:

; or (d) decide not to discipline the agent if the Authority is satisfied that there are special circumstances that justify it making the decision.

(18) Amendment (17), subsection 306AG(2), after “its decision”, insert “under subsection (1)”.

(19) Amendment (17), subsection 306AG(2), omit “referral decision”, substitute “decision to refer the agent”.

(20) Amendment (17), paragraph 306AG(3)(b), omit “referral decision”, substitute “decision to refer the agent”.

(21) Amendment (17), paragraph 306AG(3)(c), omit “referral decision”, substitute “decision to refer the agent”.

(22) Amendment (17), subsection 306AG(4) (note), omit “for disciplinary action”.

(23) Amendment (17), subsection 306AG(5), omit “14”, substitute “28”.

(24) Amendment (17), at the end of section 306AG, add:

Decision to take no disciplinary action

(8) If the Authority decides not to discipline the agent, the Authority must give the Minister written notice of its decision. The notice must set out the reasons for the decision. It must be given to the Minister on the same day.
that notice of the decision is given to the agent.

(28) Amendment (18), subsection 306AGA(1), after “section 306AG”, insert “or 306AGAC”.

(29) Amendment (18), subsection 306AGA(2), after “section 306AG”, insert “or 306AGAC”.

(30) Amendment (19), paragraph 306AJ(2)(a), omit “after the”, substitute “if a”.

(31) Amendment (20), section 306AK, after “section 306AG”, insert “or 306AGAC”.

One of the key aspects in relation to these amendments is to ensure that the MARA, the regulation authority, retains the ability to make a decision not to discipline the agent if the authority is satisfied that there are special circumstances that justify it making that decision. There is a range of other consequential amendments to do with that but that is the core of the amendments I have moved. I realise there has been a range of discussion but I think it is appropriate to get it on the record in the debate proper. The process, as I understand it—and I trust the minister will leap to his feet and correct me if I have misunderstood it incorrectly but I am fairly sure I have got it right—will be that the minister or the department will still identify an agent that has caused them concern if certain criteria have been met.

There is some concern in the Senate committee report about the appropriateness of the criteria. There is some modification to that which is welcomed. I still think there are some problematic aspects of having specific criteria but, whatever criteria you use, even if you do not have any, obviously there will still be some internal mechanism within the department to send up a red flag to get the department and the minister to examine the activities of a particular agent. Given the choice, it is better to have a set of criteria set out in the legislation that runs up the red flag so at least everybody knows what they are as opposed to a set of internal policy criteria which the department could quite easily decide for itself. At least under this approach all of the agents know what the situation is in relation to the potential to run up that so-called red flag and for the minister or the department to examine any activities of the agent further. They would then collect further information and seek a submission from the relevant agent asking for an outline of the reasons why particular results have occurred.

If the minister or the department decide to examine all that and believe that the matter should be referred to the MARA for consideration, then that is what they would do.

The key thing in relation to the Democrat amendments is that the MARA would have the power at that stage to make a decision not to discipline the agent if that is what they decided was appropriate. The concern the Democrats had was that, under the government amendments, once the minister had decided it should be referred to the MARA then there was an automatic requirement for a finding of guilt of some sort. That is an inappropriate situation for a range of circumstances, and some of them are based on the principle that the MARA is an independent organisation. It should be able to be seen as such and to operate as such.

There is still a view and a concern potentially that all of the information will be gathered by the minister and the department and the MARA will only be able to go on the information that is provided to it by the department and the minister. It cannot go outside that. I understand that concern, but the counterconcern is that it has taken a long period of time for the MARA to gather all the information. Agents have had the opportunity to delay through a range of different mechanisms, if they are wanting to frustrate the process.
I see this system as similar to a police investigatory team putting together a brief about a certain set of circumstances and then providing that to a separate body such as the DPP, who would then decide whether any action is required. The MARA then ceases to become the investigatory body but it is still able to make the determination about whether the behaviour based on the evidence before it deserves or requires some discipline to be meted out. The extra requirement that has been put in there as a consequence of the Democrat amendments is important. I am not suggesting this is a perfect system, but it is an advance on what was being put forward and, in the context of the likelihood that it would have gone through in any case, it provides an extra safeguard for the agent. It provides a more appropriate arrangement given the role and independence of the MARA. I am hopeful that it will work better with the enhancement that the Democrat amendments provide.

Senator SHERRY (Tasmania) (9.44 p.m.)—I wish to make some comments about the Democrat amendments, and these apply to the second block of amendments, too, because they are interlinked. These amendments deal with the respective roles of the regulator, MARA, and the minister or department in the process of sanctioning agents who are considered to have engaged in vexatious activity, based on their profiling results and the content of their response to the show cause notice. The bill originally proposed that the minister was the sole judge and jury and left MARA in the position of simply rubber-stamping a predetermined penalty.

From the outset the Labor opposition indicated that we had grave concerns about this procedure. Our concerns included the absence of any clear outline of the matters that the minister should take into account when considering an agent’s response to a show cause notice triggered by profiling; the perception, mistaken or otherwise, that could arise that the minister was determined to sanction a particular agent on the basis that he or she was a thorn in the government’s side; the lack of any capacity for MARA to exercise any real judgement about an agent’s conduct, thus undermining its role as the regulator; the imposition of an inflexible system of mandatory penalties—12 months suspension in the case of a first referral and cancellation in the case of a second referral—which did not take into account the fact that some transgressions are more serious than others; and the power of the minister to revoke, without any explanation, a sanction decision already imposed by MARA. The Labor opposition, in discussions with both the government and the Democrats, have sought to negotiate a constructive resolution to these concerns.

After a long delay, the government came back with proposals that went part of the way to addressing our concerns. These included the undertaking that the matters to be considered by the minister in relation to an agent’s response to a show cause shall be set out in a disallowable regulation; the removal of the mandatory penalties and the insertion of a new provision that MARA has a choice of imposing a caution, a suspension or a cancellation depending on the circumstances of the agent’s conduct; and the removal of the minister’s discretion to revoke a sanction decision.

The government’s amendments did not, however, address the situation where MARA did not believe that the agent’s conduct warranted any sanction at all. It is clear there will be cases where a fine judgement has to be made. A balance must be made to ensure that unscrupulous agents are dealt with, but that good and honest agents are not unjustly sanctioned simply because they show up in the profiling process.
The Labor opposition put to the minister that MARA should be able to request the minister to reconsider a referral decision where it is satisfied that special circumstances exist. It is fair to say that the department of immigration was not supportive of this reasonable request. The minister, however, indicated that there was merit in the idea, provided it did not cause long delays or entail cases bouncing back and forward between him and the MARA board.

By a convoluted process, this proposal has now emerged in the form of amendments from the Democrats. These appear to really be government amendments in substance if not in form. Perhaps the minister was embarrassed about moving even more amendments to his bill or did not wish to go back to his party room. Whatever the reason for doing things this way, a better outcome has been produced which enjoys the support of the Democrats, the opposition and the government.

In brief, the package of amendments provides that MARA can decide not to sanction an agent, given the special circumstances of a case. MARA must then advise the minister and the agent of the reasons for its decision. The minister must then decide whether or not the agent should be referred back to MARA for the imposition of a sanction. In doing so the minister must consider the reasons given by MARA and the content of any further submission received from the agent during the objection period. If the minister still considers that the agent’s conduct warrants action, he can refer the matter back to MARA. If he does so, MARA must impose a sanction but it determines what the appropriate sanction is.

This is a reasonable outcome. MARA will be able to refuse to impose a sanction if it considers special circumstances exist. Given that the agent will be advised of MARA’s view, the minister should not lightly dismiss such advice from the regulator. If, however, the minister still believes that an agent’s conduct is that he or she warrants a sanction, he can refer the matter back to MARA within a set and predictable timetable, knowing that MARA must then impose a sanction. This strikes a reasonable balance between the agent’s need for procedural fairness and the public’s need to see that unscrupulous agents are not let off by the regulator. For this reason the opposition is happy to support the Democrat and all further government amendments.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Mclucas)—The question is now that government amendments (1) to (5), (7) to (11), (15), (16) and (21) to (37) and government amendments (6), (12) to (14), (17) to (20), as amended, be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that schedule 1, item 75, subdivision C stand as printed.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that schedule 1, item 142, section 311N stand as printed.

Question negatived.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.49 p.m.)—I know the minister was optimistic and I hate to destroy his hopes, especially after Senator Sherry did such a good speed-reading job. But it would be better not to rush this and, given how long it has taken, an extra night will not kill us.

Progress reported.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being 9.50 p.m., I propose the question:
That the Senate do now adjourn.

Harmony Day

Senator KIRK (South Australia) (9.50 p.m.)—Yesterday we celebrated Harmony Day, a day dedicated to celebrating the diversity of cultures that we call Australian and promoting racial tolerance and acceptance. It is a day on which all Australians should take the time to reflect upon and appreciate the unique range of peoples who have come to call Australia home throughout our 203-year history since white settlement. It was many years ago now that Australia was nicknamed ‘the lucky country’. Our country was given this name because of the great opportunities that we had to offer to anyone who came here. Australia was a land that gave people a new beginning regardless of their past. Since 1945 over six million people have made Australia their new home.

As a free, open and democratic society, Australia still has a lot to offer its people and this is evidenced by the fact that each year approximately 80,000 people become new Australian citizens. Few other countries of the world could boast such a figure. This represents the tolerance, acceptance and appreciation that the majority of Australians have for other cultures, religions, races and ethnicities.

Yet unfortunately there are always those among us who maintain intolerant attitudes that promote divisiveness. Harmony Day, of all days, is a day for Australians to show the community and the government that such attitudes are unacceptable. The government, through the Department of Immigration and Multicultural and Indigenous Affairs and with the support of the Council for Multicultural Australia, administers the Living in Harmony initiative, which is designed to challenge all Australians to: first, take a stand against racism, prejudice and intolerance; second, help build a peaceful and productive future for our children by setting an example of how to live in harmony, making the most of our racial, cultural, social and religious diversity; and third, put into practice the best of traditional Australian values—namely justice, equality, fairness and friendship.

Harmony Day is a wonderful opportunity to celebrate these great values and, as a society, to put on our best performance, put our best foot forward, put on our best dress. We have so much to celebrate here, and every one of us is enriched by the multiculturalism of our society. However, we should not ignore the disharmony that we see in some places. This year we saw rioting on Redfern’s Block, rioting that showed the extent to which some Indigenous Australians feel disenfranchised in our society—cut out, powerless and ignored. Regardless of who was at fault in the incident in question, reactions show the strength of feeling that is out there in the community. It shows us that there is work to be done on this relationship, work to change this discordant note.

Despite the government’s own emphasis on practical reconciliation and effective measures which address the legacy of profound economic and social disadvantage experienced by many Indigenous Australians, the government has fallen short of its own yardstick in the area of practical reconciliation. Census data from 2001 shows that the rate of progress in improving Indigenous wellbeing and reducing the level of inequality experienced by Indigenous people compared to non-Indigenous people is minimal.

We also see a government that has no qualms about refusing access to vital services for temporary protection visa holders. These are people who, by government policy, cannot settle down here in Australia like so many other migrants and refugees who have come to our shores before them.
on rolling TPVs can never be sure of their place in our society, and they can never receive government assistance to help them become a part of Australia. Labor’s policy is to end rolling TPVs and to give real meaning to the Harmony Day theme of ‘You + Me = Us’.

Harmony Day quite appropriately coincides with the United Nations’ International Day for the Elimination of Racial Discrimination and, in light of this, I would like to speak briefly about the problem of anti-Semitism. Recently, I was fortunate enough to visit Israel. I greatly appreciated the opportunity to expand my knowledge of the Jewish people and their history. Today senators in this chamber debated Senator Stephens’s matter of public importance on the threat posed to the cohesion of Australian society by the rise of anti-Semitism. There are approximately 120,000 Jews living in Australia today, constituting the largest Jewish community in the east Asia-Pacific region. The great majority live in Melbourne and Sydney; however, there are also significant communities in Perth, in Brisbane, on the Gold Coast and in my home town of Adelaide. Jewish people were among the first to settle in Australia in the 18th century and, following World War II, many Holocaust survivors immigrated here. Today Australia has the largest per capita number of Holocaust survivors of any community in the world.

Despite the long history Jewish people have with Australia and the significant contribution they have made to Australian society, Jewish people are often the target of racial and political attacks within the community. Over the past few years there has been a substantial rise in the number of reports of anti-Semitic violence, harassment and intimidation. In some ways then, it seems Australia may be becoming less rather than more tolerant. Historically, Jewish people have always been amongst the first to suffer in any wave of intolerance. In Australia, the past few years have also seen an increase in reports of Muslim women harassed in the streets for wearing their headscarves, vandalism of mosques and anti-Muslim graffiti.

This kind of destructive and divisive behaviour cannot be tolerated. These kinds of actions and beliefs threaten to destabilise the social cohesion that Harmony Day is intended to celebrate. If Australia is to continue to be the open, inclusive and multicultural society we pride ourselves upon, then we must work together to dispel these ignorant and racist attitudes. We can celebrate harmony, but we should not pretend to possess it when we do not.

While the government holds the major responsibility for ensuring Australia continues to be a nation of acceptance and tolerance in both policy and law, in practice it is an area in which all Australians can participate. All Australians are entitled to live free from racial vilification, intimidation and harassment. All of us have an obligation to ensure that this right is a reality. Harmony Day reminds us to proactively discourage intolerant and closed-minded attitudes in all aspects of our lives. We must lead by example. Remaining conscious of personal prejudices and endeavouring not to indulge them are the first steps to removing them altogether. Harmony Day offers all Australians an opportunity to stop and consider the value of our uniquely diverse nation. It also gives us the opportunity to consider what more can be done, not to listen to the few discordant notes that sometimes jar our ears.

Education: Funding

Senator HUMPHRIES (Australian Capital Territory) (9.59 p.m.)—I rise tonight to draw attention to the disturbing and dishonest campaign being waged around the issue of Commonwealth support for non-
government schools. If one were to stand back some way from this debate and consider the broader picture in education at the moment, the most conspicuous feature one would observe—the thing that stands out the most in education—is the national government increasing spending on education by a massive amount. Compared to this fact, the distribution of those funds seems like mere detail.

It is worth dwelling on this point for one moment. For as long as I can remember, stakeholders, politicians and people in the street seem to have been saying that a much greater investment in Australian education is warranted. Now that that is actually happening, it is disturbing to note how many stakeholders and politicians have failed to recognise that. Thanks to the Australian Education Union’s misleading media campaign, many people in the street may have failed to understand what is occurring.

As a rule, I do not quote Labor figures but I was struck by the relevance of something Graham Freudenberg, the erstwhile speechwriter for Gough Whitlam, said:

The oldest, deepest, most poisonous debate in Australian history has been about government aid to church schools. The mystic incantation ‘State aid’ has broken governors, governments, parties, families and friendships throughout our history.

The potential for such divisiveness has escaped the Australian Education Union, which recently launched its irresponsible and misleading campaign to persuade people that private schools are depriving public schools of resources. At this stage, they have not been rebuked by the Australian Labor Party.

This campaign features state-specific television advertisements which compare the federal assistance received by an independent school to that of a public school. The voice-over says that two-thirds of students go to state schools, yet they only receive one-third of Commonwealth funding. Up to a point, that is correct: public schools will receive $2.5 billion from the Commonwealth this financial year while non-government schools will receive $4.4 billion. Of course, that is only half of the story.

The Australian Education Union deliberately and cynically fails to mention the funding schools receive from state governments, pursuant to longstanding funding arrangements whereby the states are the primary funders of state schools and the Commonwealth is chiefly responsible for non-government schools. This is not an invention of the Howard government; it was the arrangement honoured by both the Hawke and Keating governments.

Here is another way of looking at education funding at the present time. This financial year public schools will receive $17.4 billion from state governments while private schools will receive $1.8 billion. Imagine what an ad agency would make of those figures! If you look at the complete picture—something the AEU has not done—total government support for public schools in Australia will be $19.9 billion while non-government schools will receive $6.2 billion. Doesn’t the AEU’s campaign look a little flaccid when those figures are put into the mix?

Sixty-eight per cent of all students attend public schools but receive 76 per cent of taxpayer funds—Commonwealth and state combined—which go to schools; 32 per cent attend independent and Catholic schools but receive only 24 per cent of taxpayers’ funds. Let us add another figure: parents of children in independent and Catholic schools contribute some $3 billion to the education of their children, making a significant saving to the taxpayer. Through their taxes and fees the parents of private school students are effectively paying for the cost of their children’s
education twice and, at the same time, are subsidising the public system.

The AEU campaign, despite this skewing of the facts, might still have some credibility if the Australian government were reducing its support for government schools while increasing education funding overall. Unfortunately for the teacher’s union, that also is not the case. This year the coalition government will provide government schools with $935 million more than they received in 1996—an increase of 60 per cent. During the same period, government school enrolments increased by just 1.6 per cent. That is a 60 per cent increase with just a 1.6 per cent increase in enrolments. In the last federal budget alone, government schools received a 5.5 per cent funding increase. In the ACT, for example, they received a six per cent increase, despite enrolments falling by two per cent.

The promise for the next triennium reinforces that trend on the part of government funding. Taking enrolment to one side, the basic increases by the federal government to all three sectors of Australian education range between 27 per cent and 32 per cent. If you listen to the AEU’s campaign you will be surprised to learn that the smaller space increase for those three sectors is in fact to independent schools—27 per cent. State schools receive a 28 per cent increase and the biggest increase within that range of 27 to 32 per cent is to Catholic schools—long acknowledged, I think, by all to be the least well-resourced sector in Australian education. When enrolment changes are factored in, those figures move but the basic funding increase provided by the Australian government in the next quadrennium is, as I have said, in the range of 27 and 32 per cent—again, well ahead of expected inflation in that period.

As a Liberal, I believe in individual choice. This government believes that every parent, having paid their taxes, deserves some level of public assistance to support the education of their child, regardless of which school their child attends. The Education Union takes a different view. This is its policy:

AEU reasserts its view that the resource efforts of Governments should be wholly devoted to the public systems which are open to all.

In other words, it is a policy of no government support for private schools. The AEU’s philosophy, to paraphrase Animal Farm, is: government schools good, private schools bad.

Clearly, a growing number of parents do not share this philosophy. Between 1988 and 2003, enrolments across Australia for non-government schools rose by 22 per cent while those for government schools increased by just 2.5 per cent. During that 15-year period, the number of students at government schools in the ACT fell from 40,547 to 36,595. By contrast, non-government school enrolments rose from 20,712 to 23,571. Forty per cent of ACT students today attend private schools—the highest rate in the nation.

Why this drift away from government schools? The Prime Minister has earlier been criticised in some quarters for suggesting it is because public schools are too politically correct and values neutral. He has also been critical of education unions. It was not so long ago that the federal Leader of the Opposition was scathing of the New South Wales branch of the Australian Education Union. He said:

The greatest obstacle to progress in this State’s schools is the leadership of the NSW Teachers Federation. It is a serial offender when it comes to opposing high standards, basic skills testing and accountability. It has tried to obstruct every effort by the Carr Government to move in this direction.
The federation is locked in a time warp, practicing the education beliefs of the 1970s.

No doubt Mr Latham has had a number of changes of views since that time, but the fact remains that he identified their weakness in looking fairly at education at that time, and I do not believe anything has changed since then.

A growing number of parents are choosing to send their kids to fee charging non-government schools. I suggest the Australian Education Union examine the role it has played in that shift rather than engage in a fatuous political campaign that threatens to revive the divisions of the past. I would also like to see a bipartisan rejection of the AEU’s misleading campaign and a bipartisan rejection of the policy to abolish government support for non-government schools. I call on the Australian Labor Party and Mr Latham to stand with us on that.

**Sport: Football**

**Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.09 p.m.)—**I will speak briefly tonight on a report in a weekend newspaper on the behaviour of a footballer. There has been a lot of fairly terrible media in recent times about the behaviour of footballers from a few different codes with respect to sexual assault and sexual abuse. That raises questions that need deep thought and some significant action not just from people involved in the football codes but more broadly across society. When we look at sport and how we idolise sports people, there is no doubt that they do play a leadership role and they are significant role models to the community. I, for one, do not necessarily think that it is a bad thing that people who are successful in an area that many people have an interest in act as role models. It does put extra pressure on people in any area of public life, and anybody can fail to live up to the ideal, but there is a need to recognise not just the negatives of people misbehaving in the public eye and significantly offensive and inappropriate behaviour but also the positives that role models can play in sports and other areas. It does not mean everybody has to portray themselves as a saint, but people do have the opportunity to play a constructive role.

I found the report in the Sunday *Herald Sun* extraordinary. It related to the concerns of an AFL club about the leadership role of one of their football players. Whilst it may seem inappropriate or trivial to talk about this incident in the same breath as some of the very serious issues such as sexual assault, it is an indication of the strange thinking of some of those in leadership roles within football clubs. The report was about footballers who were part of the *Footy Show* spoof, *Bulger MD*. A long-time actor on the show, Shane Crawford, is the well-known Hawthorn captain and an extremely talented footballer. A new player on that spoof soap opera, Nathan Brown, is a significant recruit to the Richmond Football Club. He played the role of Dr Pink, a gay doctor, in the latest spoof on the *Footy Show*. I was amazed to read that he has been ordered to pull out of the show by the Richmond Football Club. The Director of the Richmond Football Club, Mr Greg Miller, said that the club had wanted Brown to withdraw from the program because of the leadership issue rather than because of fears that the role would affect his form. That is only relevant because of the debate last year about Shane Crawford’s role in this spoof supposedly affecting his form. I recall enormous amounts of media devoted to that curious issue.

I find it quite strange that a football club would see a player acting as a gay doctor in a spoof on the *Footy Show* as a problem in a leadership sense. Of all the things they could be concerned about with respect to footballers in leadership roles and as role models,
that would seem to be one of the least of their concerns. Mr Miller said:

Leadership is a hell of a lot of things ... people are watching you ... younger players are very impressionable about what you do, and how you act, and I wasn’t keen for Nathan to be involved.

I am quite concerned at the suggestion that it is a poor leadership role for any footballer or anybody in a public role to play a gay character and that, somehow, it is a poor role model for young people today. Of all the areas where there is scope for better leadership from footballers, I would have thought that a club would not have had any concerns at all about this.

Returning to my initial theme about the positive role model that footballers can play, I think it is worth recalling a very positive campaign about homophobia that the Sydney Swans ran a few years ago, with some of their star players on posters highlighting that homophobia and violence towards gay people were completely unacceptable. Any suggestion that somehow that sort of behaviour was cool was completely mistaken. That is an example of the positive role that footballers can play.

There is also the extremely positive role model from another football code: Ian Roberts, one of the more fearsome front row players in his prime, came out as openly gay whilst he was still playing the game. He wrote an interesting book. He was willing to speak about his experiences of what is obviously an extremely macho game and having to deal with and wrestle with his sexuality in that context. If there were much more openness about sexuality in situations like that, then you would be less likely to get some of the horrendously distorted ideas and attitudes about sexuality and attitudes towards women and sex that pervade the football codes. To me, it highlights one of the positive aspects that perhaps followers of football codes should be thinking about. There are obviously significant difficulties that they have to address at the moment. As I said before, they go more broadly to issues to do with society, attitudes towards women, particularly in male dominated environments. And you certainly do not get much more male dominated and, indeed, almost a celebration of male power than some of the pumped up football codes that we have in Australia. As someone who is a lifelong fan of all codes of football, I do not think that to address those real problems you have to negate the value and the excitement that football can bring. I see it being more about being open and honest about issues than simply trying to sweep them under the carpet.

It should be pointed out, of course, that football clubs are not the first institution by any means to try to hide inappropriate behaviour, to turn a blind eye to inappropriate sexual behaviour and to try to sweep things under the carpet. I have spoken many times before about equally horrendous crimes that have been committed by people in positions of authority in organisations and institutions, such as the church, which, sadly, for many years turned a blind eye to sexual assault and sexual abuse of children, women and vulnerable people by people who were in a position of trust.

Whilst there are obviously differences between those crimes and the current situation, there are also some similarities in terms of a willingness to accept a culture that ignores such extreme misbehaviour, that is willing to sweep such behaviour under the carpet in the interests of the club, religion, the institution, whatever it may be. Again, a lot of it comes down to a willingness to accept a culture that allows the abuse and mistreatment of people, whether it is football players abusing and mistreating women or whether it is others in leadership positions abusing and mistreating children. A lot of it comes down to a willing-
ness of people to either abuse situations of power or turn a blind eye.

The flip side of that is that people can play a positive role and be positive role models for turning things around, for changing attitudes for the better. A lot of attention needs to be focused on not just condemning what should be condemned but looking for opportunities to change attitudes across society, particularly in areas relating to men and their perception of sexuality in all its different forms.

Senate adjourned at 10.19 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:


Commonwealth Authorities and Companies Act—Commonwealth Authorities and Companies Orders (Financial Statements for reporting periods ending on or after 30 June 2004).

Corporations Act—

- Determination under section 1445, dated 10 February 2004.
- Regulations—Statutory Rules 2004 No. 36.

Currency Act—Currency (Royal Australian Mint) Amendment Determination 2004 (No. 1).

Customs Act—Regulations—Statutory Rules 2004 No. 32.


Higher Education Funding Act—Determination under section—


Product Ruling—


Remuneration Tribunal Act—Determination—

- 2004/01: Travelling Allowances for Members of the Australian Industrial Relations Commission.
- 2004/02: Remuneration and Allowances for Holders of Public Offices.

Sydney Airport Curfew Act—Dispensation granted under section 20—Dispensation No. 4/04.

Taxation Determination TD 2004/3.

Taxation Ruling TR 2004/2.

Telecommunications (Consumer Protection and Service Standards) Act—Telecommunications (Emergency Call Service) Amendment Determination 2004 (No. 1).
Indexed Lists of Files

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—
- Australian Public Service Commission
- Comcare
- Department of the Prime Minister and Cabinet

PROCLAMATIONS

A proclamation by His Excellency the Administrator of the Commonwealth of Australia was tabled, notifying that he had proclaimed the following provisions of an Act to come into operation on the date specified:

Maritime Transport Security Act 2003—
Part 2—1 July 2004 (Gazette No. GN 11, 17 March 2004).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Agriculture: Food Innovation Grants
(Question No. 1625)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 14 July 2003:

(1) With reference to the Minister’s Media Statement (reference AFFA03/095WT, 28 April 2003), can the Minister confirm who the Chief Executive Officer of Harvest FreshCuts Pty Ltd was at the time that this company was provided with a Food Innovation Grant (FIG) of $1.25 million.

(2) When did Harvest FreshCuts Pty Ltd apply for the grant.

(3) What was the quantum of the grant applied for by Harvest FreshCuts Pty Ltd.

(4) Who signed the application on behalf of Harvest FreshCuts Pty Ltd.

(5) Which members of the National Food Industry Council assessed the Harvest FreshCuts Pty Ltd application for this grant.

(6) Can the Minister advise whether applications for FIGs have been received from any of the following companies or their related entities: (a) Fletcher International Exports Pty Limited; (b) SPC Ardmona Ltd; (c) Peters and Browns Foods Ltd; (d) Laken and May Pty Ltd; (e) National Foods Ltd; (f) Goodman Fielder Ltd; (g) Coca-Cola Amatil Ltd; and (h) Coles Myer Group Ltd.

(7) Where applications for FIGs have been received from any of the above companies or their related entities, can the Minister advise in each case: (a) when was the application received; (b) what was the quantum of the grant applied for; (c) what was the stated purpose of the grant applied for; (d) who signed the application on behalf of the applying company or their related entity; (e) which members of the NFIC are assessing or have assessed each application; and (f) what is the status of the application.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The Chief Executive Officer was Mr Robert Robson.

(2) Harvest FreshCuts applied for the grant on 22 January 2003.

(3) The amount of the grant applied for by Harvest FreshCuts is part of the application process, which is treated as commercial in confidence by National Food Industry Strategy Ltd (NFIS Ltd), the independent company contracted to deliver certain programs under the National Food Industry Strategy.

(4) The application was signed by Mr Robert Robson.

(5) The National Food Industry Council does not sight, recommend or approve FIG applications. A Food Innovation Committee (FIC) makes recommendations to the Managing Director of NFIS Ltd on FIG grant applications. Details of FIC membership and FIG program information and guidelines are available on the NFIS website. The Council member on the FIC Grants Assessment Group which assessed the grant to Harvest FreshCuts was Dr Michael Eyles. Grants in excess of $500,000 are approved by the Board of NFIS Ltd. Strict conflict of interest provisions exist for both the FIC and the Board of NFIS Ltd.

(6) Of the 109 FIG applications (full or preliminary) received by NFIS Ltd as at 29 February 2004, three are from the companies listed.
Details of grant applications which have either been unsuccessful or are still under consideration are not publicly released by NFIS Ltd, although details of successful grants are announced. This is in line with the program guidelines and undertakings made to applicants as part of the application process. One of the listed companies, The Uncle Tobys Company (formerly part of Goodman Fielder Ltd) has been successful in receiving a grant under the FIG program. Further details are available on the NFIS website.

Goldfields Land and Sea Council
(Question No. 1810)

Senator Lightfoot asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 21 August 2003:

In regard to the Goldfields Land and Sea Council based in Kalgoorlie, which is not a government agency, but was funded by an Aboriginal and Torres Strait Islander Commission grant of $3 170 501 for 2002, and given the level of federal funding received by the council gives rise to considerable concerns regarding the apparent lack of fiscal management and public accountability:

(1) How much Federal funding did the council receive during the 2001-02 financial year.

(2) With reference to the amount of $181 166 expended on ‘fares and travel allowances’ by the council in Kalgoorlie Boulder for the 2001-02 financial year: (a) can a breakdown be provided of these costs for each journey undertaken with specific reference to: (i) the purpose, (ii) the destination, (iii) the total cost, (iv) the individual responsible, and (v) any personal expenses incurred for each trip; (b) can a list be provided for each recipient of: (i) travel allowances paid, and (ii) the capacity in which they were paid.; and (c) why did the council exceed its budgeted figure for ‘fares and travel allowances’ by $92 242.

(3) With reference to the amount of $19 227 expended on ‘field expenses’ by the council for the 2001-02 financial year: (a) can a breakdown be provided of these costs with specific reference to: (i) each item or service purchased with these monies; and (ii) the individual responsible for making those purchases on each occasion; and (b) why did the council exceed its budgeted figure for ‘field expenses’ by $14 161.

(4) With reference to the amount of $29 655 expended on ‘equipment and furniture’ by the council for the 2001-02 financial year: (a) can a breakdown be provided of these costs with specific reference to: (i) each piece of equipment and furniture purchased, (ii) its intended use, and (iii) the name of the individual who will predominantly use each item if it is not a shared office resource; and (b) why did the council exceed its budgeted figure for ‘equipment and furniture’ by $14 988.

(5) With reference to the amount of $150 133 expended on ‘meetings’ by the council for the 2001-02 financial year: (a) can a breakdown be provided of these costs with specific reference to: (i) each item, service and/or fee paid for or purchased for each meeting, and (ii) the recipients of all monies expended on meetings for the 2001-02 financial year; and (b) why did the council exceed its budgeted figure for ‘meetings’ by $41 670.

(6) With reference to the amount of $206 827 expended on ‘office expenses’ by the council for the 2001-02 financial year: (a) can a breakdown be provided of these costs; and (b) why did the council exceed its budgeted figure for ‘office expenses’ by $72 464.

Can an itemised list be provided of all monies paid by the council, the Aboriginal and Torres Strait Islander Commission or the Federal Government to Mr Brian Wyatt, Chief Executive Officer of the council for the past 3 financial years; including: (a) wages; (b) fees; (c) allowances; (d) reimbursements; (e) account payments; (f) subsidies; and (g) any other form of remuneration paid to Mr Wyatt for those 3 years.
Senator Vanstone—Aboriginal and Torres Strait Islander Services (ATSIS) has provided the following information in response to the honourable senator’s question:

(1) The Goldfields Land and Sea Council (GLSC) received grant funding of $3,170,501 from the Aboriginal and Torres Strait Islander Commission (ATSIC) in the 2001–02 financial year. The financial statements contained in the GLSC’s 2001-02 Annual Report shows no other Federal funding was received that year.

(2) (a) and (b) The GLSC expenditure of $181,166 on fares and travel allowances is itemised in Attachment A. For privacy reasons some information has not been able to be provided. (c) In relation to fares and travel allowances, the GLSC has advised that it exceeded the budgeted figure for each item because of the additional expenditure required in relation to the Wongatha native title determination proceedings. The Federal Court commenced hearing the Wongatha matter in February 2002.

(3) (a) The GLSC expenditure of $19,227 on field expenses is itemised in Attachment B. For privacy reasons some information has not been able to be provided. (b) In relation to field expenses, the GLSC has advised that it exceeded the budgeted figure because of the additional expenditure required in relation to the Wongatha native title determination proceedings.

(4) (a) The GLSC expenditure of $29,655 on equipment and furniture is itemised in Attachment C. For privacy reasons some information has not been able to be provided. (b) In relation to equipment and furniture, the GLSC has advised that it exceeded the budgeted figure because of the additional expenditure required in relation to the Wongatha native title determination proceedings.

(5) (a) Attachment D details individual transactions in relation to the $150,133 paid as meeting expenses. For privacy reasons some information has not been able to be provided. (b) In relation to meeting expenses, the GLSC has advised that it exceeded the budgeted figure because of the additional expenditure required in relation to the Wongatha native title determination proceedings.

(6) (a) Individual transactions attributable to office expenses are contained in Attachment E. (b) In relation to office expenses, the GLSC has advised that it exceeded the budgeted figure because of the additional expenditure required in relation to the Wongatha native title determination proceedings.

(7) (a) to (g) The Chief Executive Officer’s total remuneration was as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-00</td>
<td>$98,438.46</td>
</tr>
<tr>
<td>2000-01</td>
<td>$114,589.56</td>
</tr>
<tr>
<td>2001-02</td>
<td>$135,447.26</td>
</tr>
</tbody>
</table>

For privacy reasons further detail has not been able to be provided.

Immigration: Visas

(Question No. 1832)

Senator Faulkner asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 1 September 2003:

In relation to departmental officers across Australia and in overseas posts considering applications for entry and/or residency visas:

(1) Are all officers considering visa applications within a class required to consider those applications strictly on the basis of the statutory requirements for that class of visa; if not: (a) what are the exceptions; (b) what is the reason for a differential approach in applying statutory requirements; (c) how is this differential approach explained to departmental officers considering applications; (d) how is the application of this differential approach monitored by the department; and (e) what consistency or probity safeguards apply.
QUESTIONS ON NOTICE

(2) Are all officers considering visa applications within a class required to consider those applications strictly on the basis of standard requirements for consideration of documentary evidence to substantiate the claims made by the applicant; if not: (a) what are the exceptions; (b) what is the reason for a differential approach in applying documentary requirements; (c) how is this differential approach explained to departmental officers considering applications; (d) how is the application of this differential approach monitored by the department; and (e) what consistency or probity safeguards apply.

(3) Are all officers considering visa applications within a class required to consider those applications strictly in the order of receipt of the application; if not: (a) what are the exceptions; (b) what is the reason for a differential approach in applying order of consideration requirements; (c) how is this differential approach explained to departmental officers considering applications; (d) how is the application of this differential approach monitored by the department; and (e) what consistency or probity safeguards apply.

(4) Are all officers considering visa applications within a class required to consider those applications strictly on the basis of the merits of the case before them; if not: (a) what are the exceptions; (b) what is the reason for a differential approach in applying merit requirements; (c) how is this differential approach explained to departmental officers considering applications; (d) how is the application of this differential approach monitored by the department; and (e) what consistency or probity safeguards apply.

(5) Are all officers considering visa applications within a class required to consider those applications strictly on the basis of the case before them, irrespective of whether the applicant is represented by a Migration Agent, and irrespective of whether the applicant is represented by a particular Migration Agent; if not: (a) what are the exceptions; (b) what is the reason for a differential approach in applying relevance requirements; (c) how is this differential approach explained to departmental officers considering applications; (d) how is the application of this differential approach monitored by the department; and (e) what consistency or probity safeguards apply.

(6) In relation to each of the application assessment process requirements outlined in parts (1) to (5), are these requirements applied equally when being considered by a departmental officer in Australia or in overseas posts; if not: (a) what are the exceptions; (b) what is the reason for a differential approach in applying these assessment process requirements; (c) how is this differential approach explained to departmental officers considering applications; (d) how is the application of this differential approach monitored by the department; and (e) what consistency or probity safeguards apply.

(7) In relation to all of the application assessment process requirements outlined in part (6), are each of these requirements applied equally in all departmental offices across the State of New South Wales; if not: (a) what are the exceptions; (b) what is the reason for a differential approach in applying these application assessment process requirements; (c) how is this differential approach explained to departmental officers considering applications; (d) how is the application of this differential approach monitored by the department; and (e) what consistency or probity safeguards apply.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) Yes.

(2) (a) to (e) Evidentiary requirements vary. Within a class or even a subclass of visa the criteria applicants need to meet can differ. As a result, the evidence required to demonstrate that an applicant is able to be granted a visa can also vary.

For example an applicant for general skilled migration seeking to satisfy the work experience /post secondary qualifications criterion on the basis of their recent work experience overseas would need to provide quite different evidence in support of their application compared to an applicant seeking
to meet the same criterion on the grounds of having recently completed an Australian tertiary qualification.

A further example is the student visa class. This class is made up of 7 subclasses reflecting the various sectors of study available to overseas students within Australia. The criteria for each subclass vary according to English and financial requirements and educational background. It should be noted that within each subclass, there is further variation depending on the assessment level applicable to a particular country. The applicable assessment level is laid down in the regulations and is set according to the objectively assessed level of risk of applicants from those countries not complying with visa conditions.

Departmental information is available to applicants and sets out the criteria that need to be met for the grant of a visa. In many instances guidance is also provided as to the types of documentary evidence that can be used to support a visa application. The Departmental policy advice manual also provides advice to decision makers as to the nature of documentary evidence that could be taken into account.

There are both internal and external mechanisms in place to monitor the approach being taken by department decision-makers. Internally, there are centralised and local quality control procedures in place, which identify issues that may raise concern in the processing of visa applications. Supervisors play an important role. The Department has developed a quality control code that covers a wide range of visa decisions with the range of decision types covered being progressively expanded. Within this quality control framework, there is provision for the auditing of caseloads globally with cases selected randomly for audit. The outcome of these quality control checks is analysed and the Department’s senior executive provided with a comprehensive report. Processing offices are advised of the outcomes and remedial action initiated where warranted. The Department’s internal-auditor also examines a range of departmental processes and reports its findings to the departmental executive.

Externally, portfolio merits review bodies are able to review a wide range of departmental decision-making. The Commonwealth Ombudsman also has a role as does the Auditor-General in looking at departmental decisions and decision-making processes.

(3) No.

(a) The Minister has the power under the Migration Act 1958 to consider and dispose of visa applications in such an order as she/he considers appropriate. The Minister also has the power under Section 499 of the Act to give directions to a person or body having functions or powers under the Act if the directions are about the performance of those functions and the exercise of those powers. From time to time the Minister has issued directions which set out the order in which visa applications are to be processed. At the present time there are two such directions:

- Direction No. 31 - Order of Consideration of Applications for Skilled Stream and Temporary Business (Long Stay) and Business Skills (Provisional) visas and Business Sponsorship, Business Nomination and Approved Appointment Applications, and
- Direction No.32 - Order of Consideration and disposal of applications for visas in the Family Stream under subsection 51(1) of the Migration Act 1958.

Direction No. 33 which relates to the processing of visitor visas, advises decision-makers they must balance the need to make a quick decision with the need to identify those applicants who, if approved, would lead to ongoing costs to the Australia taxpayer, or would bypass established migration channels.

Within the parameters of these Directions, and while applications are mainly dealt with in order of lodgement, variations can occur from time to time, for operational or other reasons. For example, some applications may be identified as being ready for decision at time of
lodgement and may therefore be processed immediately (ie because all relevant documentary evidence has been provided at time of lodgement). Processing times within a caseload may also vary significantly depending on where information is being sourced and the level of checking required to verify claims made by an applicant. Applicants and migration agents can also influence processing times and therefore the order of processing, if incomplete applications are lodged or through being slow to respond to departmental requests for further information.

(b) See (a) above.

(c) The training of departmental decision-makers who consider visa applications includes reference to any instructions given by the Minister as to the processing of application for which they are responsible.

(d) See (2) above.

(e) The importance of consistent processing procedures and service standards is clearly communicated to departmental officers. Policy areas in the Department’s Central Office are available to provide support to departmental officers considering cases.

(4) Yes.

(5) Decisions on visa applications within a class are required to be made on the basis of the case put forward, irrespective of whether the applicant is represented by a Migration Agent or whether the applicant is represented by a particular Migration Agent. However, processing priorities and procedures undertaken may vary.

(a) Processing priorities accorded to applications lodged by certain Migration Agents may differ. Priority is given to complete applications. Where, for example, certain Migration Agents have a history of lodging complete applications and they advise that an application that they lodge is complete, then the application may be streamed for priority processing. The application is subject to the same decision making process as all other applications, but a decision may be made more quickly.

The amount of scrutiny accorded to an application may also vary depending on information known about the particular Migration Agent involved in lodging an application. For example, if a particular Migration Agent has a record of lodging applications supported by fraudulent documentation, the bona fides of documents lodged in support of applications made by that Migration Agent are likely to be examined more closely. This may affect the time taken to process applications put forward by that Migration Agent but, if documents are verified, would not affect the decision outcome.

(b) See (a).

(c) Decision-makers receive ongoing training in relation to lawful and quality decision-making. They are trained to interpret and apply relevant legislation and policy. They are also trained on how to exercise their discretion where this is relevant to their delegated decision-making powers.

Decision-makers are trained not to make any assumptions or draw inferences about any visa application as a result of it being represented by a particular Migration Agent.

(d) See (2) above.

(e) During 2003 the Department introduced a program to analyse the application outcomes of migration agents, particularly those with consistently high refusal rates. This information can be used to flag to the individual decision-maker that an application from that agent may be of concern. From time to time new information will be provided on individual agents and out of date information withdrawn. Decision-makers are instructed that the provision of information
about an agent should not be taken to raise any implication in respect of any other migration agent in any firm she or he may work with, in any capacity.

(6) Yes. The answers provided to (1) to (5) apply equally whether a departmental officer is located in Australia or overseas.

(7) Yes. The answers provided to (1) to (5) apply equally to officers wherever located within DIMIA NSW. However, it needs to be kept in mind that DIMIA offices within NSW specialise to some extent and deal with a different range of visa classes.

Fisheries: Illegal Fishing
(Question No. 1975)

Senator O’Brien asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 10 September 2003:

With reference to the answer to paragraph (3)(b) of question on notice no. 731 (Senate Hansard, 9 December 2002, p. 7520):

Has the Australian Government yet made direct representations to the Bolivian Government on Australia’s concerns about illegal, unregulated and unreported fishing and flag of convenience fishing; if so, when and in what form were these representations made; if not, why not.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:

No representations have been made as no vessels flagged to Bolivia have been detected in the Australian exclusive economic zone in the last 12 months.

Family and Community Services: Institute of Public Affairs
(Question Nos 2047 and 2057)

Senator O’Brien asked the Minister for Family and Community Services and the Minister representing the Minister for Children and Youth Affairs, upon notice, on 15 September 2003:

(1) For each of the following financial years: (a) 1996-97; (b) 1997-98; (c) 1998-99; (d) 1999-2000; (e) 2000-01; (f) 2001-02; (g) 2002-03; and (h) 2003-04, has the department or any agency for which the Minister is responsible, including boards, councils, committees and advisory bodies, made payments to the Institute of Public Affairs (IPA) for research projects, consultancies, conferences, publications and/or other purposes; if so, (i) how much each payment, (ii) when was each payment made, and (iii) what services were provided.

(2) In relation to each research project or consultancy: (a) when was the IPA engaged; (b) for what time period; (c) what were the terms of reference; (d) what role did the Minister and/or her office have in the engagement of the IPA; (e) was the contract subject to a tender process; if so, was it an open tender or a select tender; if not, why not.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) (a) No.
   (b) No.
   (c) Yes.
   (d) No.
   (e) Yes.
(i) $247.50. (ii) 26 April 2001. (iii) 3 x registrations for attendance at the State Budget Brief on 16 May 2001.

(f) Yes
   (i) $55.00. (ii) 13 May 2002. (iii) general membership for the period 1 June 2002 to 30 May 2003.

(g) Yes.
   (i) $27 134.00. (ii) 25 June 2003. (iii) Scoping phase of the research study ‘The Protocol: Managing Relations with NGOs’.
   (i) $135.00. (ii) 9 May 2003. (iii) general membership renewal for the period 1 June 2003 to 30 May 2004 and for the publication Backgrounder.

(h) No.

(2) (a) 8 May 2003.
(b) 8 May 2003 to 31 December 2003.
(c) The terms of reference for the research contract are:
   • A comprehensive assessment of the links between key Commonwealth Departments and their constituent NGOs;
   • A framework for assessing the role and standing of NGOs, based on the information requirements of those Departments and relevant Ministers;
   • A framework for a database of NGOs, including their standing;
   • A proposed standard of public disclosure in dealing with NGOs; and
   • A proposed trial Protocol that requests NGOs to supply information (based on points above) about themselves that will be publicly available.

(d) The former Minister for Family and Community Services requested that the proposal be referred to the Prime Minister’s Community Business Partnership for consideration.
(e) No. The Commonwealth Procurement Guidelines and Best Practice Guidelines notes that “The Government does not prescribe a specific purchasing method nor any arbitrary thresholds. Buyers must consider the requirements and existing market conditions of each procurement, and select a procurement method on its merits”.

**Family and Community Services: Institute of Public Affairs**

*Question No. 2209*

Senator Cherry asked the Minister for Family and Community Services, upon notice, on 10 October 2003:

(1) What was the process that led to the funding of Mr Gary Johns, of the Institute of Public Affairs (IPA), to conduct a study into the relationship between the Commonwealth Government and non-government organisations (NGOs).

(2) What were the criteria established for the project.

(3) Why was the tender process not advertised.

(4) Were the government guidelines on tendering and contracts breached.

(5) When did, or will, Mr Johns or the IPA receive this funding.

(6) Is the Government aware that the IPA claims on its website not to accept government funding.

(7) Did the Government consider the corporate governance arrangements of the IPA before commissioning it to conduct the study.
(8) Does the IPA: (a) produce an annual report; (b) produce a register of donations; (c) disclose any conflicts of interest; and (d) have an independently appointed auditor.

(9) Did the Government seek the proposal from Mr Johns and the IPA.

(10) Were any other relevant organisations asked to tender for this project.

(11) What credentials and standing does Mr Johns have to undertake this work.

(12) What requirements for consultation with other non-profit bodies will be placed on the IPA in conducting its research.

(13) Why is it not more appropriate for the national roundtable of non-profit organisations to lead such a study in partnership with the Government.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) I am advised that shortly after moving to this portfolio in 2001 the former Minister for Family and Community Services, Senator Vanstone, noted in the IPA Review issues raised by Dr Gary Johns in relation to Non-Government Organisations, particularly the importance of disclosure of information regarding their constitution, activities and funding. Senator Vanstone’s office made contact with IPA and expressed interest in the research. IPA put forward to Minister Vanstone a proposal to undertake a study on the relationship between key Government departments and NGOs, which was referred to the Prime Minister’s Community Business Partnership. The Partnership considered the proposal on 11 December 2002 and agreed to the request to fund the proposal.

(2) The criteria for the project are:
- a comprehensive assessment of the links between key Commonwealth Departments and their constituent NGOs;
- a framework for assessing the role and standing of NGOs, based on the information requirements of those Departments and relevant Ministers;
- a framework for a database of NGOs, including their standing;
- a proposed standard of public disclosure in dealing with NGOs; and
- a proposed trial Protocol that requests NGOs to supply information (based on the points above) about themselves that will be publicly available.

(3) The IPA put forward a proposal to the then Minister for Family and Community Services. The Minister sought advice of the Prime Minister’s Community Business Partnership. The Partnership considered the proposal at its 11 December 2002 meeting and agreed to the request to fund the proposal.

(4) No. The Commonwealth Procurement Guidelines and Best Practice Guidance notes that “The Government does not prescribe a specific purchasing method nor any arbitrary thresholds. Buyers must consider the requirements and existing market conditions of each procurement, and select a procurement method on its merits.”

(5) Half the funding was paid to IPA on 25 June 2003. The remainder will be paid at the completion of the project.

(6) Yes. The Department is aware of IPA’s assertion that it does not accept Government funding for its operations. This contract is a fee for service arrangement.

(7) The contract required the IPA to be registered on the Australian Business Register and hold an Australian Business Number. The delegate was satisfied that these governance requirements were met.

(8) (a) Yes.
(b) The IPA annual report includes a list of all voting members of the Institute, but in line with privacy laws it does not disclose the people who donate to the Institute.

(c) As a condition of its contracts FaCS require consultants to declare that no conflict of interest exists and to notify FaCS should a conflict of interest arise. No conflict of interest has been disclosed in relation to this project.

(d) Yes.

(9) Please refer to the response to question (1).

(10) No.

(11) Dr Johns is a Senior Fellow at the IPA and heads their Non-Government Organisation Project. Before joining the IPA he was a Member of the House of Representatives. He held Parliamentary Secretary posts in Health and Treasury, and was Assistant Minister for Industrial Relations and Special Minister of State. In 2002 he was a Fulbright Fellow in Washington DC where he analysed NGO issues in the United States.

(12) As this study investigates the transparency and public disclosure of Government departments and focuses on how departments operate, requirements for consultation have been limited to a range of Australian Government departments.

(13) The national roundtable of non-profit organisations is not a legal entity. As a result it would not be eligible to enter into a contract to receive funding.

**Family and Community Services: Community Business Partnership**

*(Question No. 2210)*

**Senator Cherry** asked the Minister for Family and Community Services, upon notice, on 10 October 2003:

(1) Since its first meeting on 30 November 1999, what have been the annual budgets of the Community Business Partnership (CBP).

(2) (a) How much has been spent each year on CBP projects since its inception; and (b) on what has the money been spent.

(3) How do applicants apply for the CBP project funds and how are funds distributed.

(4) How were the members of the CBP selected.

**Senator Patterson**—The answer to the honourable senator’s question is as follows:

(1) **Budget – Administered Funds**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocation ($m)</td>
<td>2.406</td>
<td>4.1</td>
<td>2.381</td>
<td>5.193*</td>
<td>0.151#</td>
<td>4.550^</td>
<td>4.339^</td>
</tr>
</tbody>
</table>

*$2.361m rolled over to subsequent years - $1.361 to 02-03, and $1m to 03-04.

# $1.21m of administered funding was transferred to departmental funding to enable FaCS to undertake secretariat function.

^In 2003-04 Portfolio Additional Estimates, funds were reclassified from administered to departmental appropriations - $2.5m in 2003-04 and $1.8m in 2004-05.
QUESTIONS ON NOTICE

(2) (a) This table shows total administered expenditure by financial year.

Expenditure – Administered Funds

<table>
<thead>
<tr>
<th>Business and Community Partnerships</th>
<th>1998/99</th>
<th>1999/00</th>
<th>2000/01</th>
<th>2001/02</th>
<th>2002/03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditure outcome* ($m)</td>
<td>2.3</td>
<td>2.621</td>
<td>2.868</td>
<td>1.898</td>
<td>0.136</td>
</tr>
</tbody>
</table>

* From 1999-00, figures are provided on an accrual basis.

(b) Major Community Business Partnerships Projects funded under administered allocations by financial year.

NB. The total amount spent on projects is less than total expenditure. Other non project-related expenditure includes cost of the out-sourced Secretariat from December 1999 to 1 July 2002 (staffing, accommodation and administration), advertising, the cost of Partnership meetings, and stakeholder engagement activities.

Funding $m

<table>
<thead>
<tr>
<th>Project Description</th>
<th>1998-99</th>
<th>1999-00</th>
<th>2000-01</th>
<th>2001-02</th>
<th>2002-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salvation Army Education Foundation</td>
<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td></td>
</tr>
<tr>
<td>Facilitating Best Practice Partnerships</td>
<td>0.2</td>
<td>1.13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ABS Business Giving Survey</td>
<td></td>
<td>0.36</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rotary Alliance Corporate Citizenship</td>
<td></td>
<td>0.29</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seminars program</td>
<td>0.25</td>
<td>0.25</td>
<td>0.48</td>
<td>0.17</td>
<td></td>
</tr>
<tr>
<td>Awards program</td>
<td></td>
<td></td>
<td>0.16</td>
<td>0.03</td>
<td></td>
</tr>
<tr>
<td>Conference sponsorships</td>
<td>.02</td>
<td>.02</td>
<td>0.07</td>
<td>0.03</td>
<td></td>
</tr>
<tr>
<td>Triple Bottom Line reporting stocktake study</td>
<td>0.02</td>
<td>0.02</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community Mentoring consultancy</td>
<td></td>
<td></td>
<td></td>
<td>0.13</td>
<td></td>
</tr>
<tr>
<td>Employers making a difference project</td>
<td></td>
<td></td>
<td></td>
<td>0.07</td>
<td></td>
</tr>
<tr>
<td>Feasibility study for a Not for Profit Council</td>
<td></td>
<td></td>
<td></td>
<td>0.08</td>
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</tr>
<tr>
<td>Non-profit leadership forum</td>
<td></td>
<td></td>
<td></td>
<td>0.06</td>
<td></td>
</tr>
<tr>
<td>Centenary of Federation project</td>
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<td></td>
<td></td>
<td>0.15</td>
<td></td>
</tr>
<tr>
<td>Ecumenical Community Housing</td>
<td>0.1</td>
<td></td>
<td></td>
<td></td>
<td>0.1</td>
</tr>
<tr>
<td>On-line Clearinghouse</td>
<td></td>
<td></td>
<td></td>
<td>0.06</td>
<td></td>
</tr>
<tr>
<td>Partnerships Manual</td>
<td></td>
<td></td>
<td></td>
<td>0.06</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.95</td>
<td>2.25</td>
<td>2.39</td>
<td>1.15</td>
<td>0.13</td>
</tr>
</tbody>
</table>

(3) The Prime Minister’s Community Business Partnership was formed in 1999 to develop and promote a culture of corporate and individual social responsibility in Australia and to advise Government on issues relating to community and business collaboration. In providing advice to Government and in order to achieve its aims of promulgating improvements to Australia’s corporate and community culture, various projects have been initiated or funded by the Partnership from time to time.
The Prime Minister appoints members of the Community Business Partnership.

**Immigration: Detainees**  
(Question No. 2396)

_Senator Allison_ asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 26 November 2003:

1. With reference to the $80,348 costs accrued in relation to detaining a mother and daughter in motel accommodation in South Australia for the month of June 2003, can a breakdown be provided of the expenditure.
2. What restrictions on freedom of movement apply to this woman and her daughter at the motel and outside the motel area.
3. Can a breakdown be provided of the expenditure of $230,000 during June 2003 on motels in Western Australia, and the number of detainees to whom this figure relates.
4. How many self-harm incidents by children and adults held in mainland and offshore detention centres have occurred in 2003.
5. (a) How many children currently in mainland and offshore detention are suffering from mental illness; and (b) how many are on medication for mental illness.
6. How many adult and child detainees in mainland and offshore detention are currently being prescribed sleeping tablets.

_Senator Vanstone_—The answer to the honourable senator’s question is as follows:

1. A breakdown of these costs is not readily available from departmental systems and would require a review of hundreds of lines of invoices, which would be an unreasonable diversion of departmental resources. The $80,348 costs would have included the following elements:
   - static guarding;
   - accommodation;
   - medical;
   - escorts for schooling etc;
   - accommodation for guards; and
   - car hire.

2. Privacy and security concerns limit the amount of information that can be released, however, the detention services provider (DSP) maintains a 24-hour-a-day presence at the motel. This presence is discreet and ensures the privacy of the two detainees at the motel. The two detainees are able to undertake daily activities such as visits to shops and parks. During these activities, DSP staff maintain a discreet presence.

3. A limited breakdown of this expenditure is available from departmental systems. The expenditure in June 2003 relates to one unlawful non-citizen, and not all of that expenditure relates only to that month:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation</td>
<td>$9,332</td>
</tr>
<tr>
<td>Medical Expenses</td>
<td>$1,055</td>
</tr>
<tr>
<td>Guarding/Escorts April-June</td>
<td>$220,257</td>
</tr>
</tbody>
</table>

4. Onshore:
   Incident reports from the Detention Services Provider report the following number of self-harm incidents in immigration detention centres for the period 1 January 2003 to 30 November 2003:
   - self-harm incidents by children – one attempted, nine actual;
self-harm incidents by adults – 54 attempted, 63 actual.

Notes:

- The manner in which self-harm is reported can mean that one individual may be covered by a number of separate reports and that one incident may cover a number of individuals.
- The figures include all reported incidents relating to children, whether or not substantiated (such as a parent saying that their child would not eat). Many incidents are quite minor but all are recorded, monitored, reported to child welfare authorities and followed up.
- Ongoing data purification has established that two incidents (one attempted, one actual) had been incorrectly included as relating to children in previous statistics provided to the Senate Legal and Constitutional Legislation Committee. The detainee concerned had turned 18 years old a short time before the incidents.

Offshore:
The offshore processing centres (OPCs) located on Nauru and Papua New Guinea are managed by the International Organization for Migration (IOM). Information on self-harm incidents has been obtained from IOM reports on such incidents for the period 1 January 2003 to 30 November 2003:

- self-harm incidents by children - none
- self-harm incidents by adults - five involving three individuals.

Onshore:

(5) As at 9 January 2004, there were no children residing in detention centres who had been diagnosed as suffering from mental illness or being prescribed medication for mental illness.

Offshore:

As at 13 February 2004, there were no children residing in the offshore processing centres who had been diagnosed as suffering from mental illness or being prescribed medication for mental illness.

(6) Onshore:

As at 9 January 2004, there were 31 adult male, four adult female detainees and no children who were prescribed medication to assist with sleeping.

Offshore:

As at 13 February 2004, there were 25 male adults, no female adults and no children who were prescribed medication to assist with sleeping.

**Immigration: Baxter Detention Centre**

(Question No. 2398)

Senator Webber asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 26 November 2003:

(1) How many incidents of people being placed in isolation have occurred at the Baxter Detention Centre in each of the following years: (a) 1996; (b) 1997; (c) 1998; (d) 1999; (e) 2000; (f) 2001; (g) 2002; and (h) to date in 2003.

(2) What guidelines for placing people in isolation, if any, are in place at the Baxter Detention Centre.

(3) Have there been any incidents in which Australasian Correctional Management staff abused their right to place people in isolation at the Baxter Detention Centre.

(4) Did an incident occur at lunchtime on 26 October 2002 in the dining room at the Baxter Detention Centre, resulting in staff closing the dining room and everyone going without food.

(5) Are staff at the Baxter Detention Centre permitted to use the denial of food as a punishment device.
(6) Have there been any incidents of people in the Baxter Detention Centre being denied medical treatment for toothache or any other complaints.

(7) Are physical and chemical restraints such as electricity, Valium, Zoloft and Temazepan used on people in the Baxter Detention Centre.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) Observation rooms within immigration detention facilities, also referred to as Management Units, are used to monitor detainees who pose an immediate threat to themselves, to others or to the security and good order of the facility. For example, a detainee may be placed in a Management Unit for threats or acts of self-harm, property damage or violent behaviour toward others. From time to time detainees themselves request accommodation in a Management Unit for personal reasons.

The first detainees entered Baxter Immigration Detention Facility (IDF) on 6 September 2002. In 2002, there were 23 admissions into the Management Unit. In 2003, to 26 November, 151 admissions into the Management Unit had occurred.

(2) The detention services provider has a range of Operating Procedures, applicable to all Immigration Detention Facilities under its management. These procedures include one specifically covering management separation of detainees. This procedure details for staff the rationale behind separation of detainees for management purposes, and establishes the process whereby detainees are assessed for placement in the Management Unit, how they are treated therein, and how they are reintegrated into the general detainee population where appropriate.

(3) My Department is not aware of any such instances. Decisions to move detainees to a Management Unit are taken by appropriately senior, experienced staff of the detention services provider. Placement decisions, and the basis for these decisions, are promptly reported to my Department’s IDF Manager or Deputy Manager.

My Department routinely monitors the use of Management Units, including the assessments which lead to placement and treatment of detainees during their placement, including review mechanisms. Any inconsistencies highlighted through this process are brought to the attention of the detention services provider Centre Management. Further, the use of Management Units has been the subject of high level strategic and operational discussions between my Department and the detention service provider.

(4) Food is not denied to detainees under any circumstances. My Department does not have any record of an incident occurring at Baxter IDF on 26 October 2002 resulting in the closure of a dining room and detainees going without food.

(5) There is no punishment of detainees in IDFs.

(6) Detainees in need of medical treatment are not denied such treatment. My Department is not aware of any incidents of detainees at the Baxter IDF being denied any form of medical treatment. The delivery of high quality and culturally responsive physical and psychological health services, including social support programs, is an essential component in the overall provision of immigration detention services in Australia. Health care is available 24 hours a day, seven days a week. In addition, the health care needs of each detainee are identified by qualified medical personnel as soon as possible after unlawful non-citizens are detained. Those requiring specialist treatment are referred to, or transferred to, specialist institutions or community hospitals. Dental and hospital services are provided as required.

(7) Chemical and electrical restraints are not used in immigration detention in Australia. Detainees may be prescribed a range of medication to assist with meeting their medical needs. In every case, these medications are prescribed by appropriately skilled and qualified medical practitioners, to assist the detainee, and are not used as a management strategy.
My Department has approved the use of certain mechanical restraints, such as restraints for hands and feet. These may be used as a last resort, and only where the services provider assesses that the detainee poses a significant risk of self-harm, harm to others, damage to property or escape. This assessment is based on a range of factors, including the detainee’s conduct within detention, and any prior criminal matters. The use of these restraints is also monitored carefully by my Department.

Environment: Recherche Bay
(Question No. 2438)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 2 December 2003:

With reference to the answer to question on notice no.1685: (a) Has the Minister received a copy of the Recherche Bay heritage assessment conducted by the Tasmania Heritage Council; and (b) does the Government accept the Council’s recommendations; if not, what is the schedule and what are the further requirements for its decision-making process on these recommendations.

Senator Ian Macdonald—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(a) No. We have been told by the Tasmanian Heritage Council (THC) that it did not conduct its own heritage survey of the area. The THC has said its decision was based on documentation submitted to it, the Recommendations of its Registration Committee, and presentations by the nominators and major owners.

(b) The THC’s November 2003 recommendations were to their Minister, the then Tasmanian Premier. The recommendations were that he should declare for a period of two years the ‘area which is the land mass to low water mark of the North East Peninsula (of Recherche Bay) to be a heritage area’ because of its historic cultural heritage significance, and also that all necessary steps should be taken for the period of the declaration to minimise activities that would diminish the heritage significance of the area. The Acting Premier has not yet announced his response to the THC recommendations. The THC has said it is confident that the owners will not undertake any illegal work in the interim.

This is primarily a matter for the Tasmanian Government and it is appropriate for the Tasmanian Government to make its decision in response to the THC recommendations.

A nomination proposing that the northern peninsula of Recherche Bay be placed on the National Heritage List has been received. The nomination has been referred to the Australian Heritage Council for assessment and then it will follow the statutory timetable specified under the Environment Protection and Biodiversity Conservation Act 1999.

Education, Science and Training: Logo
(Question No. 2445)

Senator McLucas asked the Minister representing the Minister for Education, Science and Training, upon notice, on 4 December 2003:

(1) When was the logo launched.
(2) What was the cost of all stationery and other material carrying the previous logo that was superseded by the new logo.
(3) What was the design cost for developing the new logo.
(4) What was the cost of launching this logo.
(5) What was the printing cost associated with this new logo.
(6) What other costs were associated with the development, launch and production of this logo.
(7) When was the logo, referred to in 2 superseded by the Australian Government coat of arms.

(8) What were the associated costs requested in questions 4, 5 and 6 above associated with the change referred to in question 7.

**Senator Vanstone**—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

1. The logo was formally unveiled at the annual Corporate Event on 7 March 2002.

2. Minimal, as the bulk of Departmental stationery is produced electronically, and the new logo replaced the old logo as required.

3. The design cost for developing the new logo was $9,913.00.

4. Nil, as set out in the answer to (1), the new logo was unveiled as part of the Department’s annual Corporate Event on 7 March 2002.

5. Minimal. See (2) above.

6. There were no other costs associated with the development, launch and production of the logo. The logo was not formally launched (see (1) above). The cost of development and production of the logo is set out in (3) above.

7. This question was answered by Senator Hill in response to Senate questions 1705-1722. The answers appear in Hansard, 7 November 2003.

8. See (7) above.

**Drugs: Methylphenidate and Dexamphetamine**

(Question No. 2520)

**Senator Allison** asked the Minister representing the Minister for Health and Ageing, upon notice, on 2 February 2004:

1. For each of the past 5 years, how many Pharmaceutical Benefits Scheme prescriptions for Ritalin and other methylphenidate and dexamphetamine drugs were filled.

2. Given that between 1990 and 2000 the United States Food and Drug Administration MedWatch program reported that there were 186 deaths attributed to methylphenidate use, how many deaths were attributed to the use of these drugs for the same period in Australia.

3. What requirements are there for pharmacists and general practitioners to warn parents of children prescribed these drugs about their potential risks and side effects.

4. What medical research is being conducted in Australia about the effects of using methylphenidate and dexamphetamine in children.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

1. Methylphenidate (Ritalin®) is not listed on the Pharmaceutical Benefits Scheme (PBS).

Dexamphetamine is listed on the PBS. The number of PBS prescriptions filled from January 1999 until December 2003 is:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>PBS Prescriptions Dispensed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>206,413</td>
</tr>
<tr>
<td>2000</td>
<td>226,349</td>
</tr>
<tr>
<td>2001</td>
<td>236,208</td>
</tr>
<tr>
<td>2002</td>
<td>245,791</td>
</tr>
<tr>
<td>2003</td>
<td>249,425</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,164,186</strong></td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
*Note – Dexamphetamine is priced below the current PBS general patient co-payment. Medicines priced under the general patient co-payment are, therefore, not subsidised under the PBS for general patients. These prescriptions are not included in the table above.

(2) In the period 1990-2000, the Adverse Drug Reactions Advisory Committee (ADRAC) received 3 reports of deaths associated with the use of methylphenidate. None of these deaths was definitely ‘attributed’ to methylphenidate. In the same period, there were no reports to ADRAC of deaths associated with the use of dexamphetamine.

(3) For all prescription medicines there are sets of documents provided. The first is the Prescribing Information (PI), which contains information to allow health professionals to prescribe and dispense the medicines appropriately. This information includes, but is not restricted to, important warnings and descriptions of known side effects.

In addition, sponsors of prescription medicines are required to make available information for patients in the form of a Consumer Medicine Information (CMI) document. This sets out, in lay terms, a description of the product, its usual uses and important information on side effects and interactions.

The provision of the CMI document is considered to be important and the Government provides assistance to pharmacists to facilitate them accessing the most up to date copy of the CMI electronically, so that it can be handed to the patient with the medicine.

However, the CMI is not intended to replace the role of the health professional in ensuring that the right treatment is chosen and the patient fully informed about its use.

The decision to use a particular medicine should be made between the prescribing medical practitioner and the patient and should entail informed consent. Where the patient is unable to make decisions, the family or designated carers are encouraged to discuss all treatment options available. It is the responsibility of the medical practitioner and the dispensing pharmacist to ensure that adequate information is given to the patient and/or carers regarding any potential risks associated with any medication.

The Australian Government has no direct power or authority over the way in which individual doctors or the medical profession in general, conduct their professional practice. This is regulated at a local level by the various State or Territory Medical Boards and by State or Territory legislation.

(4) The National Health and Medical Research Council (NHMRC) is the Australian Government’s main health and medical research funding body. The NHMRC does not currently fund any research that involves the effects of using methylphenidate and dexamphetamine in children. The NHMRC is unable to provide details of research that may be funded or conducted by other funding organisations within Australia.

There are two mechanisms by which clinical trials for new medicines or new uses can be conducted in Australia, the most common of which is the Clinical Trial Notification (or CTN) Scheme.

Under the CTN Scheme, the Therapeutic Goods Administration (TGA) must be notified of the intention to conduct a trial, but is not involved in approving the trial. Instead, responsibility for approving the conduct of a trial rests with institutional ethics committees. Trials using the products within the approved indications do not need TGA involvement. There is an alternative approval system based on TGA review of summary data, which is rarely used.

The TGA is aware of three clinical trials using methylphenidate, due for completion in 2005/2006, that have been notified to the TGA under the CTN Scheme. It is not certain if these trials have enrolled children.
A search of electronic medical databases has revealed that, within the last 10 years, there were around 25 studies carried out in Australia that investigated the effects of methylphenidate or dexamphetamine in children with ADHD. However, not all clinical trials are published in peer-reviewed journals, and the publication will usually appear several years after completion of the trial.

**Social Welfare: Benefits**  
(Question No. 2526)

*Senator Nettle* asked the Minister for Family and Community Services, upon notice, on 3 February 2004:

1. For each of the following social welfare benefits: (a) invalid pension; (b) Newstart (disability); (c) sickness allowance; (d) mature age allowance (disability); and (e) supporting parent allowance, what percentage of current recipients who were previously fit for work and employed or self-employed are claiming these benefits as a consequence of their claim for workers compensation or third party motor vehicle accident insurance having been rejected by an insurance company.

2. Of social welfare recipients currently requiring benefits because they are unfit for work, what percentage are in this situation as a consequence of failed or rejected workers compensation or third party motor vehicle accident claims.

3. For each of the following social welfare benefits: (a) sickness allowance; (b) Newstart (disability); (c) mature age allowance (disability); and (d) supporting parent allowance, what percentage of current recipients who have workers compensation, third party motor vehicle accident or private sickness and accident policy insurance claims currently pending, had those claims pending at the time of registering for social welfare.

4. For the past 7 years, what has been the average length of time taken by insurance companies to reach their decisions on these claims.

5. Based on Centrelink’s social welfare/insurance claim outcome statistics for the past 2 years: (a) what percentage of current social welfare claimants who are registered with Centrelink as ‘unfit for work’ pending the outcome of insurance claims are likely to have their insurance claims rejected whilst still unfit for full-time work because of the insurance claim related injury or condition; and (b) what percentage of these claims are likely to be finalised as a consequence of the claimant committing suicide either during the assessment process by the insurance company or immediately following rejection of the claim by the insurance company.

*Senator Patterson*—The answer to the honourable senator’s question is as follows:

1. (a), (b), c), (d), (e); 2; 3 (a), (b), (c),(d); 4 and 5 (a), (b). The detailed information required to answer the Honourable Senator Nettle’s question is not readily available. To obtain the information would be highly resource intensive. I cannot justify the level of expenditure that would be required to obtain it.

**Pan Pharmaceuticals Ltd**  
(Question No. 2527)

*Senator Allison* asked the Minister representing the Minister for Health and Ageing, upon notice, on 4 February 2004:

1. Why were the 1369 Pan Pharmaceutical products recalled in April 2003 destroyed.

2. Were any of these products tested; if not, why not.

3. Were any of these products the subject of reported adverse reactions or death; if so, can details be provided.
(4) For each recalled product: (a) what was the total quantity returned; (b) what was the total quantity destroyed; and (c) where were they destroyed.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) There were such widespread manufacturing and quality control defects and evidence of deliberate manipulation of test results at Pan Pharmaceuticals, that the Therapeutic Goods Association (TGA) could have no confidence in the safety or quality of any Pan-manufactured products.

An expert advisory committee provided advice to the TGA on the health risks posed by Pan’s critical Good Manufacturing Practice (GMP) breaches. Their findings and recommendations included that:

(i) The multiple failures of GMP identified in the auditors’ report created risks of death, serious illness, and serious injury.

Specifically, issues identified included:

- Misidentification (mix-up) of raw materials, especially herbal materials, which could lead to severe organ damage, including renal and hepatic damage.
- Cross-contamination or substitution of ingredients due to inadequate operating procedures and poor compliance with existing procedures could lead to severe allergic reactions including anaphylaxis.
- Microbiological contamination through poor raw material sourcing and handling, poor cleaning practices, and inadequate operating procedures, could lead to infections.

(ii) The risk would increase over time.

(iii) The risk could be realised at any time.

(iv) Specific risks included:

- Substitution of shark cartilage for bovine cartilage which could cause severe allergic reactions, including anaphylaxis, in fish-protein sensitive individuals.
- Substitution of bovine cartilage for shark cartilage where the bovine cartilage has been sourced without any assurance that it is Transmissable Spongiform Encephalopathies (TSE) free, and the country of origin is unknown.
- Bovine colostrum obtained from non-approved suppliers where the raw material could be sourced from a TSE ‘at risk’ country, and where the source is unknown.

(v) There were a number of products described in the auditors’ report for which there potentially could be safety concerns as a result of poor product quality. These included vitamin A products, pancreatic enzyme products, multiple herbal products, several over the counter medicines and a prescription medicine.

(vi) There was a lack of confidence in the quality of any products manufactured by the company. The committee also advised that poor quality products have an increased risk of failure in both safety and efficacy.

(2) The TGA did not undertake testing of these products, other than in relation to specific adverse reactions reported because it was not practical to test every Pan-manufactured product for every conceivable contaminant. It should be noted that Pan manufactured a wide range of products that included prescription, over the counter and other export medicines, veterinary products and foods in addition to the medicines produced for the Australian market. Moreover, the TGA could not test a tablet in either a batch or a bottle and know that the rest of the batch or bottle of tablets would not contain contaminated ingredients. Each individual tablet, in every bottle, would have had to be
tested as each tablet may or may not have been contaminated with residues from previous batch runs.

*The Financial Review*, in the article ‘Rancid Oils in Pan Capsules’ (page 7, Friday 11 July 2003 – copy at Attachment 1), reported that independent analysis of capsules manufactured by Pan Pharmaceuticals, for a clinical trial of omega 3 fatty acids for the treatment of depression in pregnant women, showed that tuna oil ‘… supplied for the capsules was substituted or blended with poorer-quality sunflower oil. The sunflower oil was more than triple the acceptable level of rancidity, while the tuna oil slightly exceeded the normal amount’. Fortunately, these capsules were never supplied as a result of the TGA’s actions.

There have been claims that the Mayne Group and the US Wal-Mart chain undertook testing and found the products to be of good quality. Investigations have found these claims to be false.

(3) Yes. Attachment 2 is a report prepared in August 2003 by the Adverse Drug Reactions Advisory Committee, in relation to adverse reactions reported since 28 April 2003, to products manufactured by Pan Pharmaceuticals.

(4) (a) to (c) Products included in the Pan Pharmaceuticals recall were the subject of a detailed recovery program implemented by the Pan Administrator.

The TGA is awaiting advice from the Pan Administrator on the quantity of product destroyed and the quantity currently held by sponsors pending the resolution of legal and financial matters associated with the recall.

Whilst those figures remain unavailable from the Pan Administrator, the TGA has worked with the sponsors of all products subject to the recall in Australia to ensure that recalled product has been fully removed from all supply channels (including the retailer).

**Drugs: Bupropion**

(uestion No. 2528)

**Senator Allison** asked the Minister representing the Minister for Health and Ageing, upon notice, on 4 February 2004:

(1) How many Pharmaceutical Benefits Scheme prescriptions have been filled each year since bupropion (Zyban SR) was approved by the Therapeutic Goods Administration (TGA) in 2000.

(2) What are the conditions for which bupropion is listed and approved.

(3) Can a copy of the TGA’s pre-market evaluation of bupropion be provided.

(4) For each year since 2000: (a) how many adverse reactions to bupropion in Australia have been reported to the Adverse Drug Reactions Advisory Committee (ADRAC); and (b) how many deaths in Australia have been attributed to the consumption of bupropion.

(5) How do the statistics for paragraph (4) compare with those for the United Kingdom, the United States of America and Canada.

(6) How many deaths and/or adverse reactions would normally warrant a Class 1 product recall.

(7) Did the TGA consider recalling this product; if so, what were its conclusions.

(8) To what are the adverse reactions and deaths attributed.

(9) What testing has the TGA conducted on bupropion.

(10) For each year since 1990, can details be provided of the 20 pharmaceuticals used in Australia which generate the most complaints to ADRAC of deaths and adverse reactions, together with a description of action taken by the TGA in relation to each drug.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:
(1) ZYBAN SR® (bupropion hydrochloride) was listed on the Pharmaceutical Benefits Scheme (PBS) on 1 February 2001. The number of PBS prescriptions filled from February 2001 until December 2003 is:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>PBS Prescriptions Dispensed</th>
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</thead>
<tbody>
<tr>
<td>2001</td>
<td>347,986</td>
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<tr>
<td>2002</td>
<td>94,853</td>
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<tr>
<td>2003</td>
<td>65,892</td>
</tr>
<tr>
<td>Total</td>
<td>508,731</td>
</tr>
</tbody>
</table>

(2) The currently approved indications for Zyban are the following: “Zyban tablets are indicated as a short-term adjunctive therapy for the treatment of nicotine dependence in those who are committed to quitting smoking, when used in conjunction with counselling for smoking cessation/abstinence”.

(3) ZYBAN SR is listed on the PBS as an authority required item for the: “Commencement of treatment as short-term adjunctive therapy for nicotine dependence with the goal of maintaining abstinence in patients who have indicated that they are ready to cease smoking and who have entered a comprehensive support and counselling program. Details of the program must be specified in the authority application.” and the:

“Completion of treatment as short-term adjunctive therapy for nicotine dependence with the goal of maintaining abstinence in patients who have indicated that they are ready to cease smoking and who have entered a comprehensive support and counselling program.” Only one treatment course per year with no increased maximum quantities or repeats will be authorised.

(3) The TGA’s pre-market evaluation of bupropion is classified as commercial-in-confidence information provided by the applicant in support of the registration of bupropion.

(4) (a) In the year 2000, the Adverse Drug Reactions Committee (ADRAC) received 22 reports of suspected adverse reactions associated with the use of bupropion; 1357 reports in 2001; 178 reports in 2002; and 86 reports in 2003.

(b) ADRAC has received 31 reports of deaths associated with the use of bupropion; all of these were received in the year 2001. Each report of a fatality is reviewed individually by ADRAC, and the Committee makes a decision as to whether the association between the medicine and the death is a strong, moderate, or low plausibility. The Committee concluded that, of the 31 fatal reports for bupropion, in 14 cases the association was moderately plausible. The causes of death in these reports were cardiac (8 reports), cerebrovascular (3), pulmonary embolism (1), and suicide (2). In 8 of these reports, the patient was aged <50 years. In only one case was the association with bupropion considered strongly plausible; in this case the patient developed a cerebral haemorrhage the day drug administration began.

(5) Comparisons between countries are difficult because of differences in both drug usage and adverse reaction reporting patterns. In the US, bupropion has been available for some time as an antidepressant, and it may be difficult to separate out those reports in which bupropion was being used as an aid to smoking cessation. In the UK, the reporting pattern appears similar to that in Australia.

USA: The US FDA records both domestic (US) and foreign reports. On 11 February 2004, the FDA advised TGA that since 1 January 2000, the FDA has received 2225 reports of suspected adverse reactions associated with the use of bupropion, including 253 deaths. 1002 of these reports, and 14 of the deaths, were domestic. The FDA notes that these are raw numbers only, and have not been examined for “duplicates or other exclusions.”
Canada: Health Canada has been requested to provide up-to-date information, and to date, this has not been received.

UK: The most recent published update from the UK CSM (dated 26 July 2002) is attached.

(6) and (7) There is a distinction between a recall and cancellation of registration. A recall is appropriate in the case of product deficiencies resulting from a faulty manufacturing process, or if it is found that the product does not conform with applicable standards. Medicine recalls are usually restricted to specific batches of the product. On the other hand, cancellation of registration may be effected if there is “an imminent risk of death, serious illness, or serious injury”, or if “the quality, safety or efficacy of the goods is unacceptable” (Therapeutic Goods Act 1989, S30). Cancellation of registration applies across all batches of the medicine. There is no set number of deaths and/or adverse reactions that would warrant a product recall or a cancellation of registration. Instead, the balance of benefits and risks must be evaluated, taking into account the clinical value of the medicine as a treatment of disease. The TGA has not considered either a recall or a cancellation of registration for bupropion in relation to adverse events reporting.

For any adverse reaction report, the event may be due to the drug or to an underlying disease, it may be a combination of these factors, or it may be a chance (coincidental) occurrence. In the case of bupropion, many of the users of this medicine can be expected to have smoking-related underlying morbidity, which may have caused or contributed to the adverse events.

The TGA does not carry out clinical testing of pharmaceuticals, since it is a regulatory body and not a research organisation.

However, the TGA monitors voluntary reports of suspected adverse drug reactions. The TGA and ADRAC - an independent expert committee which advises the Minister and Department - have an active role in reviewing post-market reports of suspected unwanted drug effects.

In response to queries raised by TGA on the advice of ADRAC, the sponsor of bupropion has indicated that it is performing a number of electrophysiological studies to further investigate the potential for bupropion to cause cardiac arrhythmias, which may have been a factor in some of the reports of adverse reactions and deaths.

(10) See the attached pages. The TGA does not take action against a medicine on the basis of raw numbers of adverse reaction reports. It is necessary to consider a range of factors, including the usage of the medicine, the pattern of events being reported, the source of the reports, and any factors which may affect the rate of reporting, such as the length of time the medicine has been on the market, and any media or promotional activities associated with the medicine.

Defence: Wanneroo Firing Range
(Revised Question No. 2534)

Senator Greig asked the Minister for Defence, upon notice, on 6 February 2004:

(1) Is the Minister aware of concerns expressed by City of Wanneroo residents about the disused Defence firing range, particularly as to the safety of the area bounded by the coast at Two Rocks, south for 2kms, east for 9kms, and north for 4kms.

(2) Can the Minister confirm that: (a) between August 1984 and August 1989, 17 pieces of ordnance were found in this area and, of those, ten could have been dangerous; (b) before this time, some 16 pieces of ordnance were found, of which 11 could have been dangerous.

(3) Can the Minister advise why the Federal Government provided financial and other support to the State Emergency Service to assist it to clean up a similar area of unexploded ordnance (UXO) in Warnbro, south of Perth, but not at this location.

(4) Will the Minister provide details of any inspection or clean up that occurred in this area subsequent to 1989, or instances of further discovery of UXO.
(5) Given the considerable urban development in the Yanchep area since 1989, if no such inspection or clean up has occurred, will the Minister now ensure that a full safety and security review of this region is undertaken.

(6) Is the Minister satisfied that the safety of new and incoming residents in the region, especially in the proposed and extensive housing development atop the old firing range, can be guaranteed.

Senator Hill—An amended answer to the honourable senator’s question is as follows:

(1) Yes. The concerns of local residents have been brought to my notice and that of my predecessors on a number of occasions. On 15 May 2001, the then-Parliamentary Secretary, the Hon Brendan Nelson MP, met with members of the Yanchep/Two Rocks Progress and Ratepayers Association and similar concerns expressed by residents were addressed at that time.

(2) I cannot confirm that the items of unexploded and malfunctioned explosive ordnance and explosive ordnance wastes were recovered specifically from the area described in question (1). However, I am aware that Defence technical personnel occasionally attend the former Yanchep/Two Rocks range area at the request of the Western Australian Police and either render safe or remove ordnance items.

(3) While decisions to provide Commonwealth funding and personnel support to such operations as that at Warnbro is taken on the merits of each individual case, the Warnbro operation commenced prior to 1989. In 1990, the then Prime Minister, the Hon Bob Hawke MP, promulgated the Commonwealth Policy on the Management of Land Affected by Unexploded Ordnance to State Premiers and Territory Chief Ministers. The Policy required the Commonwealth to undertake assessment of land known or suspected to be unexploded ordnance-affected and to provide the resulting information to the appropriate State or Territory Government. The assessment of the Yanchep/Two Rocks area identified the likely boundaries of the affected land and also those that were potentially significantly contaminated.

(4) A number of UXO assessment surveys have occurred within the former range area. In 1993-1994, Commonwealth-funded assessment searches were conducted by the Western Australia Fire and Emergency Services Unexploded Ordnance Service (FESA UXO Service) over a proposed development area of between 30-40 hectares to the South of Yanchep township. While no hazardous items were recovered, evidence of ordnance impact was detected. In mid-2000, Western Power Corporation engaged a commercial unexploded ordnance contractor to conduct an assessment of a proposed transmission line from Pinjar Power Station in the southeast to the northern boundary of the former range. The assessment of the 60 metre-wide corridor identified evidence of 25-pounder high explosive ordnance impact on the Eastern slopes of Wabling Hill. A subsequent remediation operation, contracted by Western Power to the FESA UXO Service confirmed the assessment findings, but no items of unexploded ordnance were recovered.

(5) The Commonwealth, in conjunction with the State Government, has taken and will continue to take reasonable measures to ensure the safety of the residents and occupants of land in the Yanchep and other similarly affected districts. In accordance with the terms of the Commonwealth Unexploded Ordnance Policy, the Commonwealth is not considered to be responsible for the ongoing effects of unexploded ordnance on land in which it has never had or has disposed of a legal interest. Consequently, the day-to-day management of unexploded ordnance contamination is a matter for State and local authorities. Nevertheless, the Commonwealth will provide ongoing assistance where appropriate. At Yanchep, such assistance includes the provision of advice to the State on likely areas, natures and types of contamination and in the provision of public advice and education initiatives on the hazards posed by unexploded ordnance. It also includes the appropriate action to be taken in the event that an item suspected of being hazardous is found. The Commonwealth, through the Department of Defence, will also remove or render safe such items on discovery. There is no charge for any of these services.
(6) Experts in the field of unexploded ordnance remediation, including the Department of Defence, acknowledge that, regardless of the application of world’s best practice, no guarantee can be given that 100% of hazardous items will be detected. Given the measures in place at Yanchep and in other similarly affected areas, I am satisfied that all reasonable measures have been and will continue to be taken to ensure the safety of residents and occupiers of land in such areas.

Gambling
(Question No. 2535)

Senator Allison asked the Minister for Family and Community Services, upon notice, on 11 February 2004:

(1) Can a copy be provided of the draft National Harm Minimisation Strategy on Gambling tabled at the November 2003 meeting of the Ministerial Council on Gambling.

(2) When is the draft expected to be finished and agreed to.

(3) What is the process by which the strategy will be formalised.

(4) What consultation has or will be undertaken with interested individuals and groups other than the Ministerial Council on Gambling.

(5) Has the national advisory body on gambling been involved in the development of the strategy.

(6) Why was the decision made to prepare a National Harm Minimisation Strategy as opposed to ‘a national strategy on gambling’.

(7) Can a copy be provided of the National Gambling Research Program, as agreed to by the Ministerial Council on Gambling in November 2003.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) No. The draft is a working document yet to be finalised by Ministers.

(2) A further draft is expected to be considered by the Ministerial Council on Gambling later this year.

(3) The Ministerial Council on Gambling is yet to consider and decide on the process for formalisation of the framework.

(4) The National Advisory Body on Gambling which included representatives from the gambling industry, community sector and academic sector provided advice to the Minister on development of a draft national harm minimisation strategy on gambling. The Advisory Body called for public submissions on problem gambling. Fifty-five submissions were received.

(5) Yes.

(6) All State and Territory Ministers have requested to change the name of the strategy to ‘the national framework on problem gambling’, to make it clear that the focus of their work is to address the negative social impacts of problem gambling.

(7) The seven key priority research areas are:

- National approach to definitions of problem gambling and consistent data collection.
- Feasibility and consequences of changes to gaming machine operations such as pre-commitment of loss limits, phasing out note-acceptors, imposition of mandatory breaks in play and the impact of linked jackpots.
- Best approaches to early intervention and prevention to avoid problem gambling.
- Major study of problem gamblers, including their profile, attitudes, gambling behaviour and the impact of proposed policy measures on them.
Benchmarks and on-going monitoring studies to measure the impact and effectiveness of strategies introduced to reduce the extent and impact of problem gambling, including studies of services that exist to assist problem gamblers and how effective they are.

To research patterns of gambling, the impacts of gambling and consider strategies for harm reduction among Aboriginal and Torres Strait Islander communities.

To research patterns of gambling, the impacts of gambling and consider strategies for harm reduction among rural and remote communities.

The Secretariat of the National Gambling Research Program will commission research on the priority areas approved by the Ministerial Council on Gambling.

Australian Defence Force: Pay and Allowances

(Question No. 2537)

Senator Denman asked the Minister for Family and Community Services, upon notice, on 12 February 2004:

(1) Given that pay and allowances received by members of the Naval Reserve, Army Reserve and Air Force Reserve are specifically excluded from being counted as income for social security purposes, why is income earned by instructors of navy, army and air force cadets whilst working in that capacity not similarly excluded when assessing income under the social security income test.

(2) Is the Minister prepared to undertake a review of these provisions, with a view to ensuring that the income earned by these instructors, other than those engaged in continuous full time service, is treated in a similar way, under the social security income test, as pay received by members of the various Reserve Forces.

Senator Patterson—The answer to the honourable senator’s question is as follows:

(1) The income earned by instructors of Navy, Army and Air Force cadets is assessed as income under the social security income test, as it is with most other members of the community, including members of the defence forces. The social security income test is very broad in scope and so applies to virtually all forms of income. Exemptions from the income test are very limited, to ensure that people earning income are treated in a similar manner. Pay and allowances received by members of the Naval Reserve, Army Reserve and Air Force Reserve are specifically excluded from being counted as income for social security purposes. This treatment recognises and rewards those who volunteer for reserve military service, and the nature of that service.

(2) Although the social security income and assets test are under continuous review, no specific review of Instructor pay and allowances is planned.

Australian Defence Force: Instructors

(Question No. 2538)

Senator Denman asked the Minister for Defence, upon notice, on 12 February 2004:

(1) For each of the following financial years: 2000-01, 2001-02 and 2002-03, how many people received payments as (a) an Australian Navy Cadet instructor; (b) an Australian Air Force Cadet instructor; and (c) an Australian Army Cadet instructor, in each of the following states and territories:

(i) New South Wales,
(ii) Victoria,
(iii) Queensland,
(iv) Western Australia,
(v) South Australia,
(vi) Tasmania,
(vii) the Northern Territory, and
(viii) the Australian Capital Territory

(2) In each case, how many people received the payment as part of, or in conjunction with, a continuous full-time role within the department.

(3) For each of the following financial years: 2000-01, 2001-02 and 2002-03, how much was paid by the department to: (a) an Australian Navy Cadet instructor; (b) an Australian Air Force Cadet instructor; and (c) an Australian Army Cadet instructor (other than those receiving such payment as part of, or in conjunction with, other continuous full-time service in the department), in each of the following states and territories:

(i) New South Wales,
(ii) Victoria,
(iii) Queensland,
(iv) Western Australia,
(v) South Australia,
(vi) Tasmania,
(vii) the Northern Territory, and the Australian Capital Territory

(4) For each of the following financial years: 2000-01, 2001-02 and 2002-03, what was the rate of pay paid by the department to: (a) an Australian Navy Cadet instructor; (b) an Australian Air Force Cadet instructor; and (c) an Australian Army Cadet instructor (other than those receiving such payment as part of, or in conjunction with, other continuous full-time service in the department),

(5) For each of the following financial years: 2000-01, 2001-02 and 2002-03, what was the average number of hours per annum for which: (a) an Australian Navy Cadet instructor; (b) an Australian Air Force Cadet instructor; and (c) an Australian Army Cadet instructor (other than those receiving such payment as part of, or in conjunction with, other continuous full-time service in the department) were paid in that capacity.

**Senator Hill**—The answer to the honourable senator’s question is as follows:

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<tr>
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<th>2000-01</th>
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<td>Army</td>
<td>A/F</td>
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<tr>
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<td>342</td>
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</tr>
<tr>
<td>VIC</td>
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<td>TOTAL</td>
<td>415</td>
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<td>923</td>
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</tbody>
</table>

Note: Army - variation between above total numbers and figures signed in paragraph 3 reflect that many OOC/IOC do not use the full 48 day allowance.
(2) To collect and assemble such information solely for the purpose of answering this question would entail manually checking every cadet force members PMKEYS record against other records on the PMKEYS system that may match the same number. I am not prepared to authorise the expenditure and effort that would be required.

(3)

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Note: Army - amounts shown in the above table are the amounts paid to Officers of Cadets irrespective of whether they received the payment in conjunction with, continuous full-time service in the department.
(4)  

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Note: Full Day rates


Air Force: Australian Air Force Cadet Officers and Instructor are entitled to a maximum of 20 days full-time service and 28 days part-time service per annum and are not paid by hourly rate. Therefore, the average number of hours per annum cannot be calculated.

Army: Officers of Cadets are paid either a full day or part day rate. It is not possible to calculate the average number of hours per annum for which they are paid.

**Agriculture: Avian Influenza**

(5) **Senator Brown** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 12 February 2004:
With reference to the recent outbreak of avian influenza:

(1) Does the Minister recognise the inherent danger of the rapid spread of avian influenza in chicken battery farming operations for meat and eggs, where the birds are housed crowded in cages, by the thousand, and often sharing water and feed.

(2) Will the Minister look at options for phasing out the practice of battery farming, given the threat to human and animal health should this or similar diseases reach Australia.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) If an avian influenza virus is introduced into a dense population of chickens, whether housed (on litter or in cages) or in the open, the disease is likely to spread rapidly through the flock. This is not a particular characteristic of caged chicken production systems; rather it is the result of infection of a flock with a highly infectious agent. Avian influenza can infect a wide range of birds including chickens, turkeys, pheasants, partridges, quail, pigeons, ducks, geese, guinea fowl and ostriches. The virus can be carried by migratory bird species that could infect wild birds in Australia, particularly waterfowl such as ducks. It is very important that all poultry enterprises, commercial and non-commercial, intensive, free-range and back-yard operations, particularly those near dams and waterways where wild waterfowl may be present, maintain a barrier between domestic and wild bird populations to protect their flocks from any potential exposure to the virus. Housed chickens could therefore be at a lower risk of coming into contact with the virus.

(2) The regulation of agricultural production is governed by State and Territory legislation. It has been decided at recent meetings between State and Australian Government Agriculture Ministers not to phase out conventional layer hen cages. As stated above in relation to avian influenza, layer hen cage production does not increase risks to human and animal health in comparison to other forms of poultry production.

Indigenous Affairs: Employment and Education

(Question No. 2542)

Senator Brown asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 12 February 2004:

(a) Given the high Indigenous unemployment rate, problems with Indigenous school participation rates and the low level of Indigenous people input into schools and school curriculums, what measures will the government take in relation to these issues; and

(b) in particular, what are the Government’s plans to ensure Indigenous children are respected, respect each other, feel safe and nurtured and maintain their sense of identity and pride.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(a) The Australian Government is addressing Indigenous unemployment through the Indigenous Employment Policy (IEP) introduced in 1999 to address high unemployment rates. IEP has three main elements to improve employment opportunities for Indigenous Australians. They are the:

- Indigenous Employment Program (IEP) which is made up of a suite of Indigenous specific programs, such as:
  - Structured Training and Employment Projects (STEP), which funds activities that lead to lasting employment;
  - Corporate Leaders for Indigenous Employment Project, which establishes partnerships with the private sector to provide ongoing employment opportunities;
- Indigenous Employment Centres which help CDEP participants make the transition to mainstream employment;
- A National Indigenous Cadetships Project (NICP), which provides professional advice and financial support for students studying at university;
- Wage Assistance, which provides subsidies to employers; and
- A new initiative that provides $10.5 million capital assistance to stimulate business growth through incentives to the finance sector to kick start Indigenous businesses.

- Indigenous Small Business Fund (ISBF) which provides funding for the development and expansion of Indigenous enterprises; and

- Employment assistance through Job Network. Job Network services have been refined to better service Indigenous job seekers. Some of these measures include additional training funds (for Indigenous job seekers only) and early individually tailored assistance (available for all job seekers). New Fee For Service arrangements are in place to deliver tailored employment services to job seekers in remote locations.

These initiatives are having an impact:

- More than 29,000 Aboriginal and Torres Strait Islander people have been assisted under the various elements of the IEP’s programs since 1999;
- Between 1999 and 2003, over 75,000 Indigenous job seekers have been assisted by Job Network with nearly 40,000 being placed in jobs.
- Indigenous employment grew by 22.0% between 1996 and 2001, with almost 70% of this growth being in non-CDEP employment; and
- Total Indigenous employment in major urban areas (including a small contribution from CDEP employment) grew by 7,066 or 26% between 1996 and 2001, while the unemployment rate fell from 23.5% to 20.6%.

The Australian Government is also working to improve educational outcomes for Indigenous people through the National Aboriginal and Torres Strait Islander Education Policy (AEP). The four major goals of the AEP are involving Indigenous people in decision making, equality of access to education services, equity of participation and equitable and appropriate educational outcomes.

The Australian Government also administers supplementary Indigenous specific programs to accelerate Indigenous education outcomes. These are based on the AEP and include:

- The Indigenous Education Strategic Initiatives Program (IESIP). IESIP provides funding to government and non-government providers in the pre-school, school and vocational education and training (VET) sectors. The program is composed of the following elements:
  - Supplementary Recurrent Assistance (SRA);
  - English as a Second Language for Indigenous Language Speaking Students (ESL-ILSS);
  - National Indigenous English Literacy and Numeracy Strategy (NIELNS);
  - Away from Base for Mixed-Mode Delivery; and
  - Indigenous Education Projects.

Four of IESIP’s eight priority areas relate to improving Indigenous influence, involvement and presence in education.

- The Indigenous Education Direct Assistance (IEDA) program. IEDA provides funding for the Aboriginal Student Support and Parent Awareness (ASSPA) Program, the Aboriginal Tutorial Assistance Scheme (ATAS) and the Vocational and Educational Guidance for Aboriginals Scheme (VEGAS).
These programs are assisting in improving outcomes for Indigenous students. According to the National Report to Parliament on Indigenous Education and Training 2002:

- Preschool enrolments increased in all but one State/Territory in 2002 and there was encouraging growth in enrolments in rural and remote areas of Australia.
- The 2001 results were the best yet for Indigenous students on five out of six national benchmarks for reading, writing and numeracy for Years 3 and 5, suggesting a reduction in the gap between Indigenous and non-Indigenous performance.
- There was a sharp increase in secondary school enrolments in 2002 – up 7.4% from 2001, which is the biggest single increase in any one year, and a best ever Year 12 apparent retention rate of 38.0%.
- VET enrolments were at record levels in 2002 reaching 59,763 students.
- Between 2001 and 2002, the proportion of Indigenous VET students enrolled in Australian Qualifications Framework (AQF) Certificate III and above levels increased by 8.4%, the best result to date both in terms of number and proportion.
- In the past three years the percentage of Indigenous VET graduates in employment following their course has increased from 59% to 64% to 69%.
- The gap between the proportion of Indigenous and non-Indigenous graduates in employment reduced from 17 percentage points (59% compared to 76%) to 11 percentage points (63% compared to 74%) to 4 percentage points (69% compared to 73%).

(b) Children’s welfare in the education sector is primarily the responsibility of State and Territory Governments. While no government can ensure that Indigenous school children are respected, feel safe and nurtured and maintain their sense of identity and pride, the Australian Government is taking a leadership role to ensure continuing improvements in Indigenous educational outcomes.

**Nuclear Weapons**

*(Question No. 2548)*

Senator Allison asked the Minister representing the Minister for Foreign Affairs, upon notice, on 18 February 2004:

What is the Government’s response to the following comments made by Mr Al-Baradai, Director-General of the International Atomic Energy Agency on 12 February, and if the Government agrees with any of these comments, what action does the Government intend to take in relation to each:

1. The 1968 Nuclear Non-Proliferation Treaty (NPT) needs to be revisited and toughened to bring it in line with the demands of the 21st Century.
2. Tougher inspections in the NPT Additional Protocol should be mandatory in all countries.
3. The Nuclear Suppliers Group (NSG) needs to be transformed into a binding treaty.
4. Controls over the export of nuclear material should be tightened by universalising the export control system, removing loopholes and enacting binding, treaty-based controls.
5. The Fissile Material Cutoff Treaty, stalled for nearly 8 years, must be revived which would put an end to the production of fissionable material for weapons.
6. Nuclear weapons inspectors must be empowered with much broader rights of inspections and the IAEA should have the right to conduct inspections in all countries.
7. Withdrawal from the NPT should not be allowed and, at a minimum, withdrawal should prompt an automatic review by the United Nations Security Council.
(8) Atomic weapons states who have signed the NPT – the US, China, Russia, Britain and France – should move towards disarmament, as called for in the pact.

(9) Recent non-proliferation agreements between Russia and the United States should be verifiable and irreversible.

(10) A clear road map for nuclear disarmament should be established – starting with a major reduction in the 30,000 nuclear warheads still in existence.

(11) We must [also] begin to address the root causes of insecurity. In areas of longstanding conflict like the Middle East, South Asia and the Korean Peninsula, the pursuit of weapons of mass destruction – while never justified – can be expected as long as we fail to introduce alternatives that redress the security deficit.

(12) We must abandon the unworkable notion that it is morally reprehensible for some countries to pursue weapons of mass destruction yet morally acceptable for others to rely on them for security – and indeed continue to refine their capacities and postulate plans for their use.

Senator Hill—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) The Government supports efforts to strengthen the Nuclear Non-Proliferation Treaty (NPT).

(2) The Government regards the Additional Protocol as the current standard for IAEA NPT safeguards and is pursuing wide application of the Additional Protocol including through outreach to regional countries.

(3) The Government considers the most practical approach is to lift the current standards of compliance and enforcement by strengthening and broadening the existing non-proliferation regimes.

(4) The Government has been intensifying efforts to ensure that exports of nuclear material and sensitive nuclear technologies cannot contribute to weapons programs.


(6) Australia has urged states to sign and ratify an Additional Protocol which empowers nuclear safeguards inspectors with broad inspection rights.

(7) The Government supports further examination by NPT parties of the issue of NPT withdrawal.

(8) The Government maintains a commitment to disarmament based on balanced and progressive steps toward the elimination of nuclear weapons. Australia continues to encourage the nuclear weapon states to pursue negotiations in good faith on nuclear disarmament under the commitment they have made in the NPT.

(9) The Government regards verification and irreversibility as key principles for nuclear disarmament.

(10) The Government believes that, for the time being, the main steps towards nuclear disarmament are best pursued bilaterally, between the United States and Russia.

(11) The Government takes the view that WMD proliferation is never justified.

(12) The Government is committed to the eventual elimination of all nuclear weapons.

Drugs: Mifepristone

Senator McLucas asked the Minister representing the Minister for Health and Ageing, upon notice, on 18 February 2004:

(1) Have there been any applications for Mifepristone (aka RU486) to be used: (a) in non-surgical medical termination of pregnancies, and (b) for other clinical trials.
(2) If the answer to (b) is yes, what was the nature of those trials, when were they conducted and by whom.

Senator Ian Campbell—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

(1) (a) The Therapeutic Goods Administration (TGA) has not received a general marketing application to register mifepristone in Australia for use in the non-surgical termination of pregnancy, or for any other indication.

The TGA has received an application from a medical practitioner to become an authorised prescriber of mifepristone, under Section 19(5) of the Therapeutic Goods Act 1989, for use in the termination of pregnancy.

Authorised prescribers may supply a specified unregistered drug to patients in their immediate care without seeking approval from the TGA on an individual patient basis. As part of the application process, practitioners are required to obtain endorsement from an institutional ethics committee if the drug is proposed for use in a hospital, or from a relevant specialist medical college or society for use in private practice.

However, the application was incomplete and a decision cannot be reached until these matters are resolved. The application remains inactive until all of the required information is submitted.

(b) Yes.

(2) The TGA has received two notifications under the Clinical Trials Notification (CTN) Scheme that involve the use of mifepristone. Under the CTN Scheme, the TGA must be notified of the intention to conduct a trial, but is not involved in approving the trial. Instead, responsibility for approving the conduct of a trial rests with institutional ethics committees.

Both trials involve the use of mifepristone intermittently administered to women using the implantable contraceptive, Implanon, for the alleviation of bleeding episodes some women experience when using this contraceptive method. Neither trial uses mifepristone for the termination of pregnancy.

The trials were notified to the TGA in March and October 2003, and the sponsor of both trials is the King Edward Memorial Hospital in Western Australia. These trials are ongoing.

Industry: Aluminium Dust

(Question No. 2665)

Senator Brown asked the Minister for Industry, Tourism and Resources, upon notice, on 3 March 2004:

(1) Is the Government aware of any industrial health problems caused by exposure to oxidised aluminium dust particles less than 1 micron in size.

(2) What is the maximum level of airborne alumina dust to which workers in industry may safely be exposed.

(3) As this dust is attracted to moisture:

(a) what human health concerns are associated with this dust when it comes into contact with the moist tissues and organs of the human body; and

(b) is the risk heightened for sensitive tissues such as sweat glands, eyes, esophageus, nerve, aural, lungs and digestive tissues.

(4) How dangerous is such dust in relation to protein malformation.

(5) What are the dangers of the cumulative effects of alumina dust.

QUESTIONS ON NOTICE
Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

I note that the Honourable Senator has previously asked these questions of my colleague, The Minister for Health and Ageing. I have nothing further to add to his response reported in the <i>Hansard</i> of 1 March 2004.