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The President (Senator the Hon. Paul Calvert) took the chair at 9.00 a.m. and read prayers.

NOTICES

Presentation

Senator Ian Campbell to move on the next day of sitting:

(1) That so much of the standing orders be suspended as would prevent the succeeding provisions of this resolution having effect.

(2) That the Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003 be recommitted, and that consideration of the bill in committee of the whole be an order of the day for a later hour.

(3) That the committee consider the bill as reported by the committee of the whole on 3 March 2004.

The President to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Parliamentary Service Act 1999, and for related purposes. Parliamentary Service Amendment Bill 2004.

Senator Faulkner to move on the next day of sitting:

That the Senate censures the Minister for Defence (Senator Hill) for his:

(a) failure to take seriously and respond adequately to the reports of abuse of Iraqi prisoners by United States of America personnel;

(b) failure to acknowledge Australia’s legal and moral obligations to Iraqi prisoners in general and those captured by Australian forces in particular;

(c) failure to take his accountability responsibilities seriously; and

(d) failure to correct the serious communications problems within Defence and between Defence and his office, which were revealed by the ‘Children Overboard’ affair.

Senator Brown to move on the next day of sitting:

That the Senate censures the Minister for Defence (Senator Hill) for his failure to respond to Amnesty International reports from Iraq in June and July 2003.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Tax Laws Amendment (2004 Measures No. 1) Bill 2004

NEW INTERNATIONAL TAX ARRANGEMENTS (PARTICIPATION EXEMPTION AND OTHER MEASURES) BILL 2004

MARRIAGE LEGISLATION AMENDMENT BILL 2004

First Reading

Bills received from the House of Representatives.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.03 a.m.)—I move:

That these bills be now read a second time.

Second Reading

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.03 a.m.)—I table a revised explanatory memorandum relating to the New International Tax Arrangements (Participation Exemption and Other Measures) Bill 2004 and move:

That these bills be now read a second time.
I seek leave to have the second reading speeches incorporated in Hansard.

Leave granted.

The speeches read as follows—

NEW INTERNATIONAL TAX ARRANGEMENTS (PARTICIPATION EXEMPTION AND OTHER MEASURES) BILL 2004

The bill I am introducing today contains three significant Government reforms intended to modernise Australia’s international tax regime following its review of those rules. It delivers the third instalment of international tax reforms, following closely the debate on a bill containing measures from that review targeted at the superannuation and funds management industries and the enactment of a new tax treaty with the United Kingdom.

This bill focuses on the offshore business operations of Australian companies, making those active business operations more competitive. It allows companies to disregard capital gains from the sale of shares in active foreign subsidiaries, extends the current exemption for foreign dividends and branch profits to all countries and gives companies more freedom on where to locate their intra-group service companies. The first two of these measures are commonly referred to as a participation exemption.

With these measures, Australian companies will be better able to compete for capital and will have more flexibility in using that capital. With over $160 billion invested in foreign operations by Australian companies, the productive use of that capital is of utmost importance to the well being of all Australians.

Schedule 1 to the bill reduces the amount of the capital gain or capital loss that will be subject to Australia’s capital gains tax rules where Australian companies (or Australian-controlled foreign companies) sell shares in a foreign company with an underlying active business. A calculation of the proportion of the foreign company’s assets that are active assets will be required to determine by how much a capital gain or loss is reduced.

Reducing the taxable capital gains will assist those companies to compete more effectively in offshore markets with foreign multinationals, particularly those companies based in countries providing similar capital gains tax relief. By reducing the tax implications from selling interests in foreign subsidiaries greater flexibility is provided for corporate restructuring decisions.

The measure also promotes tax neutrality by ensuring that similar tax consequences will result from the sale of substantial shareholdings in a foreign company as currently occur where the foreign company sells its active foreign business assets and distributes those profits as a dividend.

This measure will apply to disposals of shares in foreign companies occurring on or after today. Immediate commencement will ensure that tax-payer behaviour remains unaffected by the start date of the measure so that possible adverse revenue consequences are avoided.

Schedule 2 extends the current tax exemptions for foreign branch profits and non portfolio foreign dividends to all countries from 1 July 2004. The same amounts earned by Australian-controlled foreign companies, regardless of source, will no longer be taxable in Australia.

These amendments reduce compliance costs by removing the need for Australian companies to keep track of the sources of their foreign profits as they can now be distributed free of Australian company tax regardless of their country of origin or level of foreign tax. The amendments simplify the length and complexity of the foreign source income rules.

The classification of countries as either listed countries (the current list of the seven most comparably taxing countries) or unlisted countries (the rest of the world) also simplifies the application of the foreign source income rules.

While section 404 of the Income Tax Assessment Act 1936 that deals with certain portfolio dividends has been retained, necessitating the retention of a second list of over 50 countries, the policy of continuing the operation of that provision will be further reviewed by Government.

Schedule 3 reduces the scope of the ‘tainted services income’ rules. These rules apply to the offshore subsidiaries and branches of an Australian parent company, with the result that the Austra-
lian parent can be taxed on income an offshore subsidiary or branch derives from providing services to Australian residents or non-resident associates.

The application of the attribution rules to services (for example, computing services) provided between offshore group companies has unnecessarily impeded the international competitiveness of Australian companies. This bill therefore generally excludes from the rules, services provided by an offshore subsidiary or branch to its non-resident associates, as from 1 July 2004. It also provides for a more consistent treatment of services provided to branches in Australia and offshore.

The measure will generally reduce compliance costs for Australian companies, and their offshore subsidiaries, joint-ventures and branches, where those offshore entities provide services to non-resident associates. It may completely remove a small number of offshore entities from the controlled foreign companies regime resulting in additional compliance cost savings.

The measures in this bill will directly assist Australian companies with foreign subsidiaries or branch operations by generally ensuring that they only pay one layer of (foreign) tax on the profits of those offshore operations as well as reducing compliance costs in many cases. As a general rule, profits from offshore active business operations will not be taxed in Australia. However, any passive or highly mobile income shifted to those offshore investments will continue to be taxed in Australia on an accruals basis.

In short, by boosting Australia’s status as an attractive place from which to invest globally, this bill will make Australian companies internationally competitive, growing employment both in Australia and overseas. The changes are not just relevant to big business with extensive offshore operations. They will also assist those emerging Australian businesses looking to expand offshore to take advantage of global opportunities.

Full details of the measures in this bill are contained in the explanatory memorandum.

I commend this bill.

———

MARRIAGE LEGISLATION AMENDMENT BILL 2004

It gives me much pleasure to introduce this bill.

This bill is necessary because there is significant community concern about the possible erosion of the institution of marriage.

The Parliament has the opportunity to act quickly to allay these concerns.

The Government has consistently reiterated the fundamental importance of the place of marriage in our society.

It is a central and fundamental institution.

It is vital to the stability of our society and provides the best environment for the raising of children.

The Government has decided to take steps to reinforce the basis of this fundamental institution.

Currently, the Marriage Act 1961 contains no definition of marriage.

It does contain a statement of the legal understanding of marriage in the words that Commonwealth authorised marriage celebrants must say before they solemnise a marriage (section 46 of the Marriage Act). Those words are: ‘Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.’

The Government believes that this is the understanding of marriage held by the vast majority of Australians.

It is time that those words form the formal definition of marriage in the Marriage Act.

This bill will achieve that result.

Including this definition will remove any lingering concerns people may have that the legal definition of marriage may become eroded by time.

A related concern held by many people is that there are now some countries that permit same-sex couples to marry.

It has been reported that there are a few Australian same-sex couples who may travel overseas to marry in one of these countries on the basis that their marriage will then be recognised under Australian law on their return.
Australian law does, as a general principle, recognise marriages entered into under the laws of another country with some specific exceptions. It is the Government’s view that this does not apply to same-sex marriages.

The amendments to the Marriage Act contained in this bill will make it absolutely clear that Australia will not recognise same-sex marriages entered into under the laws of another country, whatever country that may be.

As a result of the amendments contained in this bill same-sex couples will understand that if they go overseas to marry, their marriage, even if valid in the country in which it was solemnised, will not be recognised as valid in Australia.

The Government has reiterated its fundamental opposition to same-sex couples adopting children. In the view of the vast majority of Australians, children (including adopted children), should have the opportunity, all other things being equal, to be raised by a mother and a father.

This bill will prevent same-sex couples from adopting children from overseas under international arrangements involving bi-lateral or multi-lateral treaties.

The bill does not interfere with adoptions that occur entirely under the law of a foreign country that do not depend on bi-lateral or multi-lateral arrangements.

These are matters primarily for the country concerned.

In summary, this bill makes clear the Government’s commitment to the institution of marriage. It will provide certainty to all Australians about the meaning of marriage into the future.

Debate (on motion by Senator Mackay) adjourned.

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

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

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PARLIAMENTARY SUPERANNUATION AND OTHER ENTITLEMENTS LEGISLATION AMENDMENT BILL 2004

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004 and informing the Senate that the House has disagreed to the amendments made by the Senate, and requesting the reconsideration of the bill in respect of the amendments to which the House has disagreed.

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

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.05 a.m.)—I move:

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

The amendment that we are referring to is the amendment moved by the opposition relating to superannuation arrangements for existing MPs who are senior officeholders—an amendment moved by Senator Sherry and passed by the Senate, but to which the government is opposed. I will not speak at any length on this, but I should record the fact that we regard this as a rather fatuous amendment. I think Senator John Cherry exposed the hypocrisy of this argument. In the previous debate we heard Senator Nick Sherry explain with great persuasive capacity the reasons why we should not interfere with the arrangements for existing MPs. It was a most uplifting and persuasive contribution, but it was immediately undermined by his amendment. The amendment seeks to undermine the arrangements for a class of existing MPs. I thought the Democrat representative was quite right to say that that was
utterly inconsistent. If what is proposed is a reduction in the arrangements for senior officeholders, what is so magical about reducing them to the level of a cabinet minister? Why not reduce them all to the level of a backbencher?

If you are going to spike and undermine the principle that we do not interfere with the existing arrangements for existing MPs, then there is no necessary or logical limit at which you should draw the line. It is also, as I pointed out, inconsistent with the opposition’s failure to apply the same approach or principle to the new accumulation arrangements that the Senate is about to put in place by law. Therefore, the government does not support this amendment. We seek to have the Senate not insist upon this amendment for the reasons outlined. As I said before, what we are talking about, apparently at the behest of Senator Sherry, is Mr Latham’s belief that he does not want to be paid the superannuation which applies under the current arrangements. We are being told that Mr Latham is prepared to sacrifice something which he has not got. If ever he becomes Prime Minister and entitled to the superannuation arrangements which he says he does not want, then he will be perfectly entitled to voluntarily offer them up in any form he likes—either that they remain in consolidated revenue or he gives them to his favourite charity. He would be perfectly entitled to do that, but to seek to have the Senate contradict the principle which Senator Sherry so properly and persuasively outlined by force of law is completely unnecessary, hypocritical and contradictory.

I welcome the fact that the opposition has indicated it is prepared to support this motion that it not insist on its amendment. I am sorry it is here at all because this is quite a momentous occasion for the parliament. We have come to agreement, and I welcome the fact that the opposition and the government have been able to essentially agree upon new arrangements for new MPs. That is significant. The new arrangements that will be put in place will be much more in line with community standards, will provide much more flexibility for members and senators and will bring an area of our remuneration and entitlements which have been the subject of considerable controversy in the community more into line with community standards. As Minister for Finance, I welcome the fact that one aspect of the government’s unfunded liabilities of some $90 billion, to wit the $500 million of unfunded liabilities in the parliamentary scheme, will now, in a sense, be capped and will, over this generation of members of parliament, wind down to zero. The taxpayers should welcome that, and we should all acknowledge that this is a very significant piece of legislation. I welcome the fact that it will now pass today in an acceptable form.

Senator SHERRY (Tasmania) (9.10 a.m.)—We are dealing with the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004, the effect of which is to close the existing Parliamentary Contributory Superannuation Fund. The existing parliamentary superannuation is what is known as a defined benefit fund. The existing defined benefit fund is not unusual in the sense that there are many hundreds of thousands of employees in workplaces throughout Australia, particularly in the public sector but also in the private sector, who are covered by what are known as defined benefit funds. This is the last occasion the parliament will consider the closure of the parliamentary politicians superannuation defined benefit fund.

The parliamentary politicians superannuation defined benefit fund has been a significant matter of public controversy. I agree with the comments by Senator Minchin that this is a significant occasion because this
issue has been one of significant debate and concern throughout the Australian community. The closure of the fund from the date of the next election, whenever that should be, will mean that new employees will be covered by what has become known as the community standard of contributions to superannuation. The community standard in this country is a nine per cent superannuation guarantee. This was established by the former Labor government in the early 1990s. It is that establishment of a consistent national standard, as much as anything else, which has led, over the last 10 to 12 years, to the slow disappearance of defined benefit funds in general. Defined benefit funds are usually significantly more generous than the nine per cent community standard. Defined benefit funds, by their nature, provide a guaranteed outcome regardless of any fees or charges or market rates of return. Defined benefit funds have been in significant decline; they have been shut down and closed off over the last 10 to 12 years. I do not have hard data on the number of employees in existing defined benefit funds—it would certainly be in the hundreds of thousands—but the fact is that they have been closed in all the state public sectors and the Commonwealth public sector and they are gradually being shut down throughout the private sector.

The establishment of the nine per cent superannuation guarantee as a community standard has spread awareness in general because it has spread superannuation to most of the Australian workforce—something that did not exist prior to the Labor government’s introduction of the superannuation guarantee back in the early 1990s. The current parliamentary superannuation fund, a defined benefit fund, has average contribution levels from the employer of approximately 67 per cent. That was going to drop to 65 per cent for technical reasons I will not go into this morning. It was by general standards, including comparison to defined benefit funds, a generous scheme. It is always difficult for politicians or parliamentarians to deal with these issues themselves, but the reality is the scheme was established by parliament and, therefore, it is parliament itself and the members of parliament who need to consider its closure.

The fact is we would not be dealing with the closure of the current parliamentary superannuation fund if the leader of the Labor Party had not shown the strength and determination to have it closed when he announced in early February that ‘one of’—and I stress one of—the Labor Party’s new superannuation policies would be the closure of the parliamentary superannuation fund. I have no doubt—and I have no doubt that in the Australian community people understand—that we would not be dealing with the closure of the fund today if it had not been for the policy of the Labor Party announced by the Leader of the Opposition, Mr Mark Latham. In considering the Labor Party’s policy to close the parliamentary superannuation fund, of course, we had the adoption of the Labor Party’s policy by the Liberal government within two days of the Labor Party announcing the policy. I am not going to go into the details of the turmoil that that caused in terms of the government’s internal debate, but the fact is that Labor and Mark Latham led decisively on this issue.

The amendment we are considering via the message today from the House of Representatives deals with the only amendment made to the bill when it was considered earlier in the week by the Senate. The amendment goes to the introduction of a cap from the date of the next election to eight office-holders—whoever holds those offices from the next election—from the Prime Minister down. The amendment was moved by the Labor Party in the Senate and was carried; however, the Liberal government in the
The House of Representatives have refused to accept the Labor amendment. The Labor amendment goes to capping from the date of the next election the benefits under the defined benefits scheme for eight officeholders. Again, this shows the leadership and determination of the Labor leader, Mr Mark Latham, who was quite insistent that the defined benefit parliamentary superannuation fund should contain a cap.

The cap reflected in the amendment is set at the additional allowances which are taken into account for superannuation purposes at cabinet minister level. That would effectively cap the pension entitlement from the scheme at approximately $110,000. I say ‘approximately’ because the impact of the superannuation surcharge tax is an additional factor which impacts on individuals in different ways. I might say that a cap is not unusual in defined benefit funds. Caps exist and are very common in other defined benefit funds across the public and private sector, not just in Australia but throughout the world. The Labor leader, Mark Latham, believes that a cap set at $110,000, which would reduce the maximum benefit from approximately $180,000 or $185,000, is quite sufficient in the context of the superannuation benefits available in the wider community. In this country there is a total maximum cap on superannuation benefits in general, which is known as the retirement benefit limit—RBL. So caps are not unusual.

The Labor Party are faced with the choice of insisting on their amendment. If we were to insist on our amendment and if we had the support of the minor parties and the crossbenchers, the bill would not pass, and that would mean that the parliamentary superannuation fund would not be closed. The Labor Party will not be insisting on its amendment, because the most important issue at the moment for us is to ensure the closure of the parliamentary superannuation fund. That will be accomplished by the passage of this bill and the acceptance of this message. I make it perfectly clear, however, that it remains Labor policy to institute a cap on the current parliamentary superannuation fund. In my discussions with our leader, Mark Latham, on this issue, he is singularly determined that there should be a cap. Should a Labor government be elected at the next election, the Labor Party—which would enjoy a majority in the House of Representatives and, I hope, the same support for this amendment on the crossbenches in the Senate—is committed to ensuring that there is a cap at approximately $110,000.

In concluding, as Senator Minchin indicated, this is a reasonably historic occasion and momentous in that sense. But I think it is momentous in the broader sense that the closure of the parliamentary superannuation fund really does mark the end of defined benefit funds as we have known them in Australia. Putting aside the generosity of the parliamentary superannuation fund, the closure of defined benefit funds, which gave a guaranteed outcome regardless of fees and charges and investment performance, and the general rise of what are known as accumulation funds confer greater levels of risk on the members of those superannuation funds. They are required to bear market rates of return, and they are required to bear the fees and charges that are payable in accumulation type schemes. The issue of accumulation funds and fees and charges will be debated extensively next week in respect of the so-called choice legislation, so that is a debate for another day.

This is a historic occasion. These issues are difficult for members of parliament to consider because we are effectively voting with respect to a parliamentary entitlement, if you like, but we nevertheless have to deal with the issue. And we have dealt with the issue in closing the fund. We are required to
deal with the issue because it is our duty, because the parliament itself established the fund back in 1948. To ensure that the general closure of the parliamentary superannuation fund occurs through this vote this morning, the Labor Party will not be insisting on the amendment.

Senator HARRIS (Queensland) (9.22 a.m.)—I rise to place on the record that One Nation does support the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004. Briefly, I cast the chamber’s attention back to a period shortly after I first came into parliament when we were debating parliamentary superannuation. During the debate on that legislation, Senator Brown and I both supported an amendment that would allow a parliamentarian to opt out of the scheme. On that occasion, if my memory serves me correctly, the entire chamber voted against that amendment. We have, again, within this legislation a portion of the amendment that prohibits a member from opting out of the present superannuation entitlement to bring themselves back in line with the superannuation conditions that all other Australians in general have. We have now exactly the same situation as we had last time we were debating parliamentary superannuation. Those of us who wish at this point in time to transfer to a scheme that reflects the standard of schemes which other Australians have are prohibited from doing so.

I take into account Senator Minchin’s comment that any of us would be able to either voluntarily give up those benefits or donate them to charity, and that is a decision which I believe each one of us will take at the appropriate time. In closing, One Nation will not be insisting on Labor’s amendment. Through you, Chair, I have a query of the Labor Party. Labor’s amendment to section 3B states:

For the purposes of subsection … an other Minister in Cabinet is a Minister in Cabinet other than the Prime Minister, the Deputy Prime Minister, the Treasurer, the Leader of the Government in the Senate or the Leader of the House of Representatives.

The way I read the amendment, it actually removes the Prime Minister, the Deputy Prime Minister, the Treasurer, the Leader of the Government in the Senate or the Leader of the House of Representatives from that cap. I do not know whether I misunderstood your comments previously, Senator Sherry, but I believe you indicated that those people would be caught by that. To some degree it is irrelevant, because the amendment will not be insisted upon. One Nation very clearly put on the record that we will not insist on this amendment for the same reason as Labor: so that the legislation will go through.

Senator ALLISON (Victoria) (9.26 a.m.)—I need to correct the historic record, Senator Sherry, and point out that it was not Labor alone who brought about this reform of parliamentary superannuation. I remind you that the Democrats initiated an inquiry back in, I think, 1997. We were both on the superannuation committee at the time, so I am sure you did not forget that. We have consistently campaigned on this issue ever since that time and before, when I was not in the parliament. It also needs to be said that we are wasting parliament’s time here. Labor’s amendment, whilst we supported it, was always a stunt. My colleague Senator Cherry said so during the debate. Labor has always indicated, apparently, that it would not be insisting on it. We are dealing here with yet another stunt that does not add up to much. But the Democrats were prepared to support it because, if it did nothing else, it reduced the superannuation generosity and we were pleased to see that. However, as I said, we certainly understood the Labor Party would not be insisting on it.
This is a historic occasion and I, too, acknowledge that. We can all claim in this place some pride in, at last, turning the situation around. Senator Sherry has provided us with a bit of a history of the superannuation defined benefits system in this country and how it has evolved. The system has always been pretty generous. I think it has been a cause of great anxiety for some of us in this place and there has certainly been a great angst out there in the community that we were seen to be, and were, benefiting from such a generous superannuation provision as this.

On behalf of my colleagues, the Democrats welcome this legislation. It did not go far enough and it did not affect those of us who were making the decision of course. We will have two classes of parliamentarians in this place after the next election; some will be paid more than others in superannuation. We still do not think that is fair, and we do not accept the arguments put forward that, constitutionally, it is not possible to do otherwise. However, that debate has been had, and I hope we can bring this to the vote. It does not matter what we vote because Labor obviously will not insist on this amendment. But we are pleased to see resolution of the reform of parliamentary superannuation.

Senator SHERRY (Tasmania) (9.31 a.m.)—I am a smoker and I am being cajoled into giving up in order to lengthen my life expectancy.

Senator Hogg—And collect his superannuation.

Senator SHERRY—There is some irony in the conversation that is occurring behind me.

Senator Minchin—It saves money—

Senator SHERRY—Yes, I am told that I will save money from the parliamentary superannuation fund if I keep smoking. I have also been reminded that, because of the birth of my twins and because we now have three children, I am trying to do my best at the other end of the scale, as well. Putting that aside, in respect of the issue that Senator Harris raised, his reading is not correct. I had the same view when I read the initial draft of across the board reduction of the 69 per cent top up coming from taxpayers to nine per cent. We have been able, through Mark Latham’s initiative, to humble the Prime Minister into saying that they would make it apply to future of members of parliament. But both the Labor Party and the coalition have said, ‘But not to us; certainly not yet.’

As we all know, after the coming election there is going to be a two-tiered system here whereby people who are in the parliament now and who are re-elected or stay on will continue to get the 69 per cent—that is us—whereas new members will go to the nine per cent—that is them. Moreover, the attempt to curb the most outrageous superannuation top-ups for people getting more than parliamentary salary which Labor put forward has now caved in. We do not cave in on that. The Greens will insist on the Senate amendments even while Labor goes weak at the knees and caves in, as we are seeing it do. We will vote to insist that the House of Representatives amend the legislation as the Senate required.
the amendment but I am assured by the clerks who helped us draft the amendment—it was not easy, I have to say, and I thank the clerks—that the amendment is correctly worded in terms of instituting a cap.

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

The committee divided. [9.37 a.m.]
(The Chairman—Senator J.J. Hogg)

Ayes…………… 49
Noes…………… 6
Majority……… 43

AYES
Abetz, E.  Barnett, G.
Bishop, T.M.  Boswell, R.L.D.
Brandis, G.H.  Buckland, G.
Calvert, P.H.  Campbell, G.
Campbell, I.G.  Chapman, H.G.P.
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Tchen, T.  Troeth, J.M.
Watson, J.O.W.  Webber, R.
Wong, P.

NOES
Allison, I.F. *  Brown, B.J.
Cherry, J.C.  Greig, B.
Murray, A.J.M.  Nettle, K.

* denotes teller

Resolution reported; report adopted.

ANTI-TERRORISM BILL 2004
In Committee

Consideration resumed from 17 June.

The TEMPORARY CHAIRMAN (Senator Marshall)—The committee is considering amendments (4) to (6) on sheet PD201 moved by Senator Ellison.

Senator NETTLE (New South Wales) (9.41 a.m.)—When we reported progress last night, the Minister for Justice and Customs had just answered my question on indefinite detention. I thank the minister for making it clear that it is not the government’s intention in this bill to include indefinite detention. I suggest to the minister that it would have been a good idea to have put that into the legislation if indeed it is the government’s intention not to ensure indefinite detention. We were talking at that point about whether indefinite detention would be considered reasonable, to which the minister answered it would not be considered reasonable. Could the minister give us a ballpark as to what he considers reasonable if he does not consider indefinite detention reasonable?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.42 a.m.)—This is an issue for the courts, but I can advise the chamber of the judicial interpretation of the term ‘reasonable’ in this context. The High Court of Australia considered this feature in relation to a Victorian provision in the case of Pollard v. The Queen, 1992-93, 176CLR, page 177. There was a joint judgment, and Justices Brennan, Dawson and Gaudron stated that the Victorian Crimes Act 1958 envisaged a limited period of time, a reasonable time, during which a person may be held for questioning or while an investigation was being carried out. The High Court clearly states that a reasonable time, which is the standard used in this bill, is a limited time. It does not equate with in-
definite detention, as I said yesterday, and the judges further commented on how the discretion to exclude evidence interfaces with the concept of reasonable time. At page 190 there is a useful extract from the case of Pollard. It says:

If the questioning of a person in custody were to continue beyond a reasonable time, that person not having been brought before a bail justice or the Magistrates’ Court, it would constitute questioning during a period of unlawful detention and the admissibility in evidence of any confession or admission made during that period would depend, not only upon compliance with the provisions of s.464H, but also upon the application of the common law rules regarding voluntariness, fairness and overriding public policy in which the unlawful detention would be a highly relevant consideration.

That states that if you go beyond what is reasonable then you face a sanction in the form of the evidence obtained not being admissible. Any law enforcement officer who is going about an investigation is doing that with a view to having evidence admitted. Rendering evidence obtained inadmissible is a substantial sanction to fall on an investigation, and that is a result which would be borne in mind. If it were unlawful detention, as I said yesterday, there would be common law remedies available. The High Court has mentioned in this particular case that the common law would still apply. So when the court considered this in Victoria it did have relevance to the provisions we are talking about—they are provisions in similar terms—and they provide judicial guidance as to what is reasonable.

You cannot talk in a hypothetical situation of what might be reasonable in a certain circumstance—it depends on the circumstances of the case—but there is very clear judicial warning from the High Court that if that provision in relation to reasonable time is abused then there will be sanctions that follow. If it were unlawful detention, the person could take action. But, most importantly, the evidence is rendered inadmissible. It makes the efforts of the investigating officer futile.

Senator BROWN (Tasmania) (9.46 a.m.)—The whole argument that the government has been putting forward for this legislation is that you cannot leave these matters to the courts. This legislation is basically the government intervening on the courts of Australia to insist on mandatory sentencing for people who face the courts over charges that relate to terrorism—directly or indirectly. Now we have the government arguing that, when it comes to a definition of how long detention may be for suspects being questioned, we should leave that to the courts. It cannot have it both ways. What a sloppy attitude to legislation this is from the minister. The responsibility of government for legislation as important as this is to define its terms, its meaning and its intent exactly and not leave it to the courts.

Senator Nettle inquired as to just what is meant by the sloppy definitions—or the absence of definitions—in this legislation. How long could a person be held? Clearly, if you look at the legislation, you see that it is endless. There is no defined end time in which a person who is arraigned must be interrogated. The government says, ‘We’re not going to define it either; we’ll leave that to the courts.’ It is found in this totally contradictory situation because it has not presented legislation to the parliament which is defined. This is really important law being made here. We are caught, as ever, in the difficulty between wanting to ensure that people who are planning terrorism are able to be discovered and prevented from their evil intent and, on the other hand, making sure that we do not concede what many people think terrorists want to achieve—which is, to bring down democratic forms of government. So there is a tension here.
This legislation breaches the international covenant on the rights of citizens. For example, it is a giant step towards mandatory sentencing. It limits what courts can do in using their judicial judgment to determine how long a person can be kept in prison. It is a big step towards mandatory sentencing of the variety which we, only a few short years ago, successfully removed—as far as children were concerned—in the Northern Territory. Here it is coming through the back door of the federal parliament which achieved that result just a short while ago. When it comes to defining—before you get to the court and the sentencing of a person—how long a person can be interrogated, we find there is no definition. Senator Nettle’s questions have drawn a blank from the minister, who says, ‘Oh, we’ll leave that to the courts.’

So there is this contradiction in the government’s approach. On the one hand, it wants to take away from the court the ability to apply a sentence which fits the crime—and to intervene in that in a way which we maintain cuts across international law and Australia’s obligations under international law—and, on the other hand, when we get to this interrogation phase we have the government saying: ‘We’ll leave that to the courts to determine. Somebody will have to appeal to the court, after the fact, that they have been held unnecessarily and without proper warrant for a prolonged period of time for an interrogation that should not have taken that long. We’ll leave that to the courts.’ That is unsatisfactory. The government should be putting specifics into this legislation. The minister’s intent that people should not be held for an unreasonable period of time comes without any definition of what unreasonable or reasonable means. That is unsatisfactory.

Question agreed to.

**Senator BROWN (Tasmania) (9.52 a.m.)—by leave—I move Australian Greens amendments (7), (8) and (9) on sheet 4228:**

(7) Schedule 1, page 8 (after line 12), after item 7, insert:

7A After section 23DA

Insert:

23DAA Oversighting report to be tabled by Ombudsman

(1) Within 2 weeks after the end of each quarter:

(a) the AFP Commissioner; and

(b) where a State or Territory Commissioner of Police exercises power under this Act, that State or Territory Commissioner of Police; must give to the Ombudsman a copy of every authority extending the interrogation period issued during the quarter pursuant to section 23DA.

(2) The Ombudsman may require a Commissioner listed in subsection (1) to furnish such information about an authority issued pursuant to section 23DAA as is necessary for the Ombudsman’s proper consideration of it.

(8) Schedule 1, page 8 (after line 12), after item 7, insert:

7B After section 23DA

Insert:

23DAB Requirement for Ombudsman to inspect records of AFP

(1) The Ombudsman:

(a) must inspect the records of the Australian Federal Police in relation to extensions of interrogation periods at least once every 12 months; and

(b) may inspect the records of the Australian Federal Police at any time, for the purpose of ascertaining whether the requirements of this section are being complied with.
(2) Nothing in this section requires the Ombudsman to inspect records in relation to an extension of an interrogation period that has not been completed.

(9) Schedule 1, page 8 (after line 12), after item 7, insert:

7C After section 23DA

Insert:

23DAC Oversighting report to be tabled by Ombudsman

(1) The Ombudsman must, as soon as practicable after 30 June each year, prepare a report on:

(a) whether the AFP and State and Territory police practices and guidelines relating to the extension of interrogation and detention periods during the preceding 12 months comply with the International Covenant for Civil and Political Rights;

(b) detail any exceptions to compliance with the International Covenant for Civil and Political Rights.

The report required by this section must be prepared in consultation with the Human Rights and Equal Opportunity Commission.

(2) The report prepared in accordance with this section is to be given to the President of the Senate and the Speaker of the House of Representatives for presentation to the Senate and the House of Representatives respectively.

These amendments ensure that there is an oversighting by the Ombudsman of what happens under this legislation. Proposed section 23DAA is a very simple and important review mechanism. I cannot see that the government could take any umbrage with the parliament being kept informed by the Ombudsman as to how this legislation is working. It is legislation that has got components that the Greens oppose—for example, the argument we have just been having and that was had last night. Here is an entirely innocuous review mechanism by the Ombudsman so that the parliament is kept acquainted with how this legislation is working. I am sure that the government will find no difficulty with that.

The amendments go on to give the Ombudsman further responsibilities to oversee the legislation and report back to parliament. Amendment (8) provides that the Ombudsman must inspect the records of the Australian Federal Police in relation to extensions of interrogation periods at least once every 12 months and may inspect the records of the AFP at any time for the purpose of ascertaining whether the requirements of this section have been complied with. Of course, it adds that nothing here requires the Ombudsman to inspect records in relation to an extension of an interrogation period that has not been completed. So there we have provision for inspection of AFP records about interrogation.

Amendment (9) is to do with an annual report. The Ombudsman should have an overview, reporting quarterly but with an annual report summing it up and, if necessary, with a special report if the Ombudsman thinks it is warranted after a period of interrogation has been completed by the Australian Federal Police or another police body. This is a mechanism for keeping the parliament acquainted with the progress of this legislation once it becomes law where there are real concerns about Australia’s obligations under the International Covenant for Civil and Political Rights. That concern has been expressed not just by the Greens but also by a number of organisations that are concerned that we keep safe our fundamental commitment not only to the higher levels of established Australian protection of legal and political rights but also to the international benchmark, which is the international covenant.
If the minister has a particular concern with any part of these three amendments, we would welcome his having a look at any adjustment that might be necessary to keep this Ombudsman’s oversight and report to parliament as part of this legislation. Of course the minister will speak for himself, but it is very difficult to think logically that a government that is determined that this legislation will not infringe on the rights of Australians unnecessarily would not want an independent authority like the Ombudsman to have an overview and report back to parliament.

Senator Ellison (Western Australia—Minister for Justice and Customs) (9.59 a.m.)—Senator Brown has raised a number of issues. Firstly, in relation to compliance with our international obligations, I stated yesterday that the government believes that the Anti-terrorism Bill (No. 2) 2004 does meet our international obligations. I think I mentioned that it was advice from the Office of General Counsel. It is in fact the Office of International Law that we rely on for that advice and not the Office of General Counsel, but we have advice which says that this bill is compliant with our international obligations.

We believe that such a review as mentioned by Senator Brown is not necessary, for a number of reasons. First and foremost, it is already catered for by the oversight of the Ombudsman in relation to activities of the Australian Federal Police. This has been ventilated to some extent quite recently. The investigatory framework proposed in the bill already ensures that there is judicial supervision of police exercise of powers. A judicial officer can only extend the investigation period if satisfied of a number of matters, including that the investigation is being conducted properly and without delay. A judicial officer oversight is not something that you would find normally in law enforcement for this sort of situation.

As well as that, you have got the Ombudsman, which I mentioned. The Ombudsman can act on any complaint. He can self-initiate—that is, he can of his own motion conduct an inquiry. We also have in relation to general police behaviour in investigations the Australasian Police Ministers Conference standard guidelines for police custodial facilities. These guidelines have been in place since 1993 and impose minimum standards of care to be afforded to persons in custody including transport, accommodation, rest, food and respect for religious practices. These safeguards apply to the detention and questioning of terrorist suspects.

Also contained in the legislation is a number of other safeguards. These are by no means exhaustive, but the suspect has a right to communicate with a legal practitioner, a friend or relative, an interpreter and a consular office. The provision of dead time allows a suspect to have time to rest and recuperate or receive medical attention. There is also the right to remain silent and, of course, there is a right of the suspect to obtain a copy of the record of interview. I mentioned those other aspects applicable to common law. I mentioned Pollard’s case in the High Court.

So we have in place legislative oversight in relation to the Ombudsman and the conduct of Australian Federal Police. We have the common law with a vast body of practice which has been built up over a long period of time in relation to safeguards for people who are being questioned by police. We have the guidelines that I have mentioned—the police ministers’ guidelines themselves—and we have in this bill itself judicial officer oversight in relation to an extension of dead time. So there are layers of protection for the person concerned. There is also the Complaints (Australian Federal Police) Act, which pro-
vides for a formalised mechanism of complaint in relation to the behaviour of the Australian Federal Police. It really is comprehensive.

Apart from that, I have also given an undertaking that the government will have a review of those aspects of part IC of the Crimes Act. They are the very issues that Senator Brown is concerned about—time for questioning and all of those issues that I have gone through. There will be a review of those aspects of the bill three years after the legislation comes into force. That would be an opportunity for the parliament to have a close look at all the aspects that Senator Brown has mentioned. In the meantime, you have all those layers of scrutiny which I have mentioned: the Complaints (Australian Federal Police) Act, the Ombudsman, the police ministers’ guidelines, the provisions which I have mentioned in relation to part IC of the Crimes Act, the provisions in this bill and the judicial officer involvement. So for all those reasons we do not believe that the amendments proposed by the Greens are necessary.

We can understand the sentiments that are being expressed in those amendments, but we believe that they have been catered for and, as I say, the government are firmly of the view that this bill complies with our international obligations.

Senator BROWN (Tasmania) (10.05 a.m.)—That is simply a statement of the government not being competent about this legislation at all. When you cut into the time honoured rights of Australian citizens in the way this legislation does, particularly when you are cutting across the rights of the courts, as this legislation does, then it is reasonable that you increase the oversight. The government says, ‘No, we want to do the first, cut the rights of citizens and the courts’—and the argument is about terrorism—and we do not want to institute in a simple mechanism like the Australian Greens amendments a commensurate oversight.’ You leave it to the aggrieved person to somewhere down the line find some mechanism through the appeals provisions, including the safeguard of a JP—a person who may have no legal training at all—right at the pivotal moment when their rights need to be upheld. All this is a statement by the minister that the government does not want to have a decent review coming back to this parliament on the workings of this quite draconian legislation so that we are able to ensure that it does not cut across rights of average Australians who get caught up by this mechanism.

Whichever way you might argue about laws on terrorism, where there have been important and clear-cut laws to help protect people from potential terrorism, like the aviation laws, the Greens have been there to support them, but we are saying here: as this bill is going to go through, let us have a mechanism which supports the wide public interest as well. Institute it here. Let the obligation be on the Ombudsman’s office to report back to parliament. And the government says no. That is pretty poor.

Senator LUDWIG (Queensland) (10.07 a.m.)—The opposition have considered Greens amendments (7), (8) and (9) and listened to the debate carefully here this morning. The amendments provide for the involvement of the Ombudsman in the police investigative powers that are being considered here today. We have heard the minister outline existing safeguards which go to the police complaints act together with the existing powers of the Ombudsman, which are quite broad. We believe the existing mechanisms, without more, are appropriate. We certainly do recognise the need for, and we are committed to, an independent review of these provisions, and we will give future consideration to these matters and the most appropriate person to do that when these matters are again looked at. Without more,
we find ourselves in the position of not being able to support the Greens amendments.

Senator GREIG (Western Australia) (10.09 a.m.)—We Democrats will be supporting these and other amendments being moved today by the Australian Greens, much of which I think reflect and pick up on the key points that we made in our minority report to the Senate Legal and Constitutional Legislation Committee inquiry into this matter. I just have a quick question for the Greens senators. Senators Brown and Nettle, in proposing their amendments—certainly amendment (7)—use the term ‘interrogation period’, although I note that the bill uses the term ‘investigation period’. I just wanted to check with the Greens senators whether they meant for that differentiation and, if that is not the case, whether they are satisfied that the terms are not inconsistent and will not lead to some confusion in the future.

Senator BROWN (Tasmania) (10.10 a.m.)—We are just calling a spade a spade with ‘interrogation’ instead of ‘investigation’. We mean the same thing. We would be quite happy to substitute the word if it were to make a difference, but, as you have just heard, Labor is not going to support this important oversight mechanism by the Ombudsman. The Greens amendments will be lost by Labor and the coalition voting not to have this Ombudsman’s oversight.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.11 a.m.)—by leave—I move government amendments (7) and (8) on sheet PD201:

(7) Schedule 1, item 15, page 9 (line 20), after “paragraph (b)”, insert “, (c), (d) or (e)”.

(8) Schedule 1, item 15, page 9 (after line 22), after subsection (7), insert:

(8) Before the Governor-General makes a regulation prescribing an organisation for the purposes of paragraph (7)(a), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering:

(a) a serious violation of human rights;

(b) armed hostilities against the Commonwealth or a foreign State allied or associated with the Commonwealth;

(c) a terrorist act (as defined in section 100.1 of the Criminal Code); or

(d) an act prejudicial to the security, defence or international relations of the Commonwealth.

In support of these amendments I again rely on comments I made in the speech in reply of the second reading debate. The government proposes these two amendments to the Crimes (Foreign Incursions and Recruitment) Act 1978. The first amendment introduces criteria by which the minister may prescribe organisations to which the defence in section 6(4) of the act does not apply. The subsection I have mentioned provides that a person is not guilty of committing an offence against the act if his activities were committed whilst he was serving in any capacity in or with the armed forces of a government of a foreign state. The second amendment ensures that a person who commits a hostile act while in or with Hamas, Hezbollah or LET, which are listed as terrorist organisations in the Criminal Code regulations, cannot benefit from the defence in section 6(4) of the Crimes (Foreign Incursions and Recruitment) Act 1978.

What we have here is a situation where someone might be involved with, let us say, one of the terrorist groups which I have mentioned which have been listed, but that group is tied up with the force of a foreign country. The person then pleads the defence of section 6(4) of the act and relies on that. What
we would be doing here is taking away that defence. In order to do that, the organisation the person is involved with would have to have been listed. What we are also doing here is providing the criteria for that listing. We have provided that a minister may prescribe an organisation if the minister is satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering serious violations of human rights, armed hostilities against the Commonwealth or a foreign state allied or associated with the Commonwealth, a terrorist act as defined in the Criminal Code or an act prejudicial to the security, defence or international relations of the Commonwealth.

I might add that the introduction of the criteria was the result of a recommendation made by the Senate Legal and Constitutional Legislation Committee. These two amendments really are ones which I would commend to the chamber and which flow from recommendations made by the Senate committee.

Senator LUDWIG (Queensland) (10.15 a.m.)—Labor support government amendments (7) and (8). These amendments implement recommendation 2 of the Senate Legal and Constitutional Legislation Committee report, which was that the proposed new regulation-making power in the Crimes (Foreign Incursions and Recruitment) Act be subject to clear criteria. This is the power to list an organisation’s involvement, which would deprive an accused of the defence of service with an armed force or a foreign government. This was an amendment sought by Labor in our letter to the government on 12 May. We were pleased to learn this week that the government has accepted it and will move it. The government’s amendment enables an organisation to be listed where the minister is satisfied on reasonable grounds that the organisation is involved in a serious violation of human rights, armed hostilities against Australia or an allied or associated country, a terrorist act or an act prejudicial to the security, defence or international relations of Australia. They are somewhat looser criteria than Labor proposed in amendment (5), which were that the organisation is involved in:

(a) conduct which would constitute an offence under Division 268 of the Criminal Code; or
(b) armed hostilities that are prejudicial to the defence or international relations of Australia.

Indeed, wording similar to that in paragraph (d) of the government’s amendment was found to be objectionably vague when it was first proposed in the Security Legislation Amendment (Terrorism) Bill 2002, which was part of the prescription power. Nevertheless, having regard to the nature and consequences of the regulation-making power proposed in the current legislation which we recognise are in fact different from the power to list terrorist organisations under the Criminal Code, we are prepared to accept the government’s amendment. Consequently, it will be therefore unnecessary for us to move the opposition’s amendment (5).

Senator GREIG (Western Australia) (10.17 a.m.)—Government amendment (8) places limitations on the defence available under the Crimes (Foreign Incursions and Recruitment) Act to individuals who serve in the armed forces of a foreign nation. The bill provides that this defence is not available to individuals who engage in armed hostilities on behalf of a terrorist organisation. However, it is restricted to terrorist organisations prescribed by regulation and omits the terrorist organisations which have been legislatively prescribed, such as Hamas and Hezbollah, as well as organisations found by a court to be a terrorist organisation. While government amendment (8) introduces certain criteria of which the minister must be
satisfied before regulations are made to pre-
scribe an organisation for the purposes of the
foreign incursions act, it implements one of
the recommendations made by the Senate
Legal and Constitutional Legislation Com-
mittee and will certainly help to rein in an
otherwise arbitrary power. For those reasons
we can support both amendments (7) and (8).

Question agreed to.

Senator NETTLE (New South Wales)
(10.19 a.m.)—by leave—I move amend-
ments (1), (2) and (4) on sheet 4228 revised,
which are in the name of Senator Brown:

(1) Schedule 1, item 21, page 11 (lines 9 to 12),
omit paragraph (d), substitute:

(d) where a person has been convicted
of an *indictable offence or a
*foreign indictable offence, and
there are reasonable grounds to sus-
pect that the person has derived
*literary proceeds in relation to the
offence; and

(2) Schedule 1, page 11 (after line 16), after
item 22, insert:

22AA After section 20

Insert:

20AA Return of forfeiture when conviction
quashed

Where a person has forfeited *literary
proceeds in relation to an offence in
accordance with this Act and the
conviction of the person is quashed, the
literary proceeds must be returned to
the person.

(4) Schedule 1, item 24, page 11 (lines 19 and
20), omit the item, substitute:

24 Paragraph 153(1)(a)

Omit “from the person committing”,
substitute “directly from the person
being convicted of”.

All of these amendments deal with the provi-
sions within the bill that seek to take away
the capacity of individuals who have been
charged with terrorism offences to be able to
profit from writing about their experiences,
and I spoke in my second reading contribu-
tion to this debate about how that particularly
impacts on the two Australians, Mamdouh
Habib and David Hicks, in Guantanamo Bay.
Affecting the capacity of individuals to write
about indirect notoriety therefore could pre-
vent discussion about conditions in Guan-
tanamo Bay, in Abu Ghraib or at Bagram air
base and, also potentially, conditions inAus-
tralian prisons. We have seen tremendous
prison reforms that have occurred not just in
this country but in other countries as a result
of individuals writing about their experiences
behind bars.

This legislation seeks to take away the ca-
pacity of individuals to profit from writing
about their experiences. This legislation does
it by taking away the capacity of all indi-
viduals, whether they have been convicted or
not of the criminal activity, to write about
and profit from their experience. What these
three Greens amendments do is limit the for-
feiting of profits from writing about prison
experiences to those who have been con-
victed. This legislation seeks to say that any-
one charged with these terrorism offences
cannot profit from material they write about
their experiences. These three Greens
amendments seek to limit it to those people
who have experienced convictions. The bill
as it currently stands without these Greens
amendments affects people charged with a
terrorism offence and subsequently found to
be innocent, to have been unlawfully ar-
rested, who may write about their experi-
ences—for example, those individuals who
have been held in Guantanamo Bay, some of
them for two years without charge, and indi-
viduals who are not Australian citizens but
other citizens of the world whose govern-
ments have seen fit to argue that they should
be released from Guantanamo Bay, for ex-
ample, British citizens. There is a raft of
other countries that have argued that their
citizens should be released—and they have been—and we have heard the comments and the claims that they have made in relation to the torture that they saw Mamdouh Habib, one of the Australians, experiencing in Guantanamo Bay.

If one of those individuals were to write about their experiences, under this government’s legislation, were they to be an Australian they would not be able to gather any profits from that. These individuals would have been locked in Guantanamo Bay for two years without charge, released because the American government did not believe there was anywhere to proceed, then talked of torture and abuse that occurred in Guantanamo Bay to individuals. If they were to seek to profit out of doing that, under this legislation, as Australians they would be prevented from doing so. These Greens amendments seek to limit that to where an individual has been convicted.

I will make a little bit of comment on the detail of these amendments. The first one limits the forfeiting to a conviction only, rather than any offence that the court is satisfied they may have committed. A court in Australia is not in a position to determine in a fair and appropriate way, with all the relevant evidence available, whether an offence has been committed. Greens amendment (2) says that any forfeiture should be returned if a person’s conviction is quashed. The Greens believe that it is only just, in the circumstances where a conviction has been quashed, that any forfeiture of money be returned to the individual.

Greens amendment (4) will ensure that only proceeds that result directly from a crime a person is convicted of are forfeited, rather than indirectly from a crime committed. That would prevent the inclusion of proceeds derived from discussing conditions in prison here or elsewhere, which should happen according to the government. The explanatory memorandum explains that notoriety could flow from where a person was detained rather than from the commission of the offence. The three Greens amendments seek to make it clear that individuals who are not convicted of an offence, who are found to be innocent, are not prevented from gaining profits from writing about their experience.

Senator BROWN (Tasmania) (10.24 a.m.)—I have had a long-time concern that people who are criminals can profit from that criminal activity through writing about it later, having it converted into films or whatever. That is not what is at stake here. As Senator Nettle has so cogently just outlined, under this draconian legislation people who are innocent but who have been charged effectively cannot talk about that experience by putting it into book form or another form for which they are going to be remunerated. Let’s take the case of Mr Mamdouh Habib, the Australian citizen who is currently illegally held in Guantanamo Bay and who, according to reliable witnesses, has been tortured in Guantanamo Bay but who has not been charged with anything. After more than two years incarceration there is a strong likelihood that, if he is charged, he would not be convicted. We know he would not be convicted in an Australian court, because the Prime Minister has said so. Under Australian and international law this citizen of Australia has been treated illegally and will not be convicted in any Australian court. But this legislation says that this person cannot write about his experience of being criminalised by the US authorities, who have become the criminals in Guantanamo Bay by breaching the Geneva convention and by President Bush illegally keeping them in the limbo of Guantanamo Bay, which is currently being tested in the Supreme Court of the United States. This is an egregious censorship that
has no place in an open democracy like Australia.

Whatever the argument about a criminal profiting from crime, it does not apply in this situation. The Prime Minister himself has said that Hicks and Habib could not be found guilty in an Australian court. But here the Prime Minister, through this legislation, is censoring the future ability of Australians to hear the story of these two Australian citizens being illegally held overseas. Here is the Prime Minister censoring two Australians who will be brought before, at best, a kangaroo court called a ‘military commission’ in the United States, where many of their basic legal rights are withdrawn so that they can be convicted where no Australian court would convict them. We as Australian citizens are not going to be able to hear about this. That is the intent of this legislation. That is so wrong. This is political censorship being brought into play here by the Howard government.

Whatever one’s prejudgment may be about the two Australians, the prejudgment by the government here is that 20 million Australian citizens will not hear about their experiences. That is what is embodied in this legislation. This legislation does not just affect the people who will be caught up by these laws rightly or wrongly. It makes no differentiation as to whether people are innocent or guilty. It says that they shall not be able to get the remuneration from writing about those experiences as they ought to be able to. I am talking here about innocent people. Where is the provision in this legislation saying that, if people are found to be innocent, this does not apply? It is not there. That is what the Greens amendments are effectively aiming at. But under this legislation this government is saying, ‘No, we will penalise Australian citizens who have been found to be innocent and to have been wrongly treated. We will not allow that story to be written in a way that would return renumeration to innocent future victims of this legislation.’ That is political censorship by the government. This is Mr Howard saying, through this legislation, ‘I do not want the story of these innocent people told in the future, because that is not to my political advantage.’

I note yesterday’s media release by the Law Council of Australia. This is not the Australian Greens speaking; this is the Law Council of Australia, which exists to represent the legal profession at the national level; to speak for its constituent bodies on national issues; and to promote the administration of justice, access to justice and general improvement of the law. What does it say about this legislation? It says:

Changes to anti-terrorism laws creating new minimum non-parole periods for Commonwealth terrorism offences may discourage suspects from cooperating with authorities and lead to shorter overall sentences for convicted terrorists.

In other words, it will have the opposite effect to that which is contemplated. This is the Australian legal profession pointing to the political content in this legislation. The press release goes on to say:

Law Council President Bob Gotterson, QC, condemned the amendments …

Mr Gotterson said amendments to change the presumption in favour of bail for people accused of terrorism offences may discourage suspects from cooperating with authorities and lead to shorter overall sentences for convicted terrorists.

The press release goes on to say:

“In an attempt to bolster their pre-election credentials on security related issues, both major parties have forgotten about the separation of powers and the importance of judicial discretion in administering the criminal law,” Mr Gotterson concluded.
We then find that innocent people cannot write about their experiences. The incentive is taken away. Any remuneration they get will be confiscated. These are innocent Australians here and overseas. How dare the government do that? Where is the opposition on this? Will the opposition support these amendments? How can you penalise innocent Australians with aforethought? How can we legislate to say that the rights of people found to be innocent—who could not be found guilty in an Australian court—will be removed? How can we legislate to say that this parliament will penalise people who we know in advance are not going to be found guilty in any Australian court—who are innocent under the Australian legal system? How can the Australian parliament do that? How can we intervene in the judicial system to apply penalties to people who are innocent? Of course we cannot. I appeal to the opposition to support these Greens amendments to see that that does not happen.

**Senator LUDWIG** (Queensland) (10.33 a.m.)—Labor are not able to support these amendments. We recognise that the Greens have a long history of not supporting a civil stream of the proceeds of crime regime, which was introduced in 2002—subject to a lengthy Senate inquiry at the time, which I also participated in—and then passed in this parliament. Labor believe that such a regime was necessary and justified. We do not think it appropriate now to revert to an exclusively conviction based regime, even if only in respect of the matter that is currently agitated by these Greens amendments. However, our foreshadowed amendment later on will deal with the broader issues.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.34 a.m.)—The government opposes the amendments moved by the Greens. It is fair to say that the opposition has amendments which are relevant to the same area, the literary proceeds. We have passed a law which provides for a civil based system of proceeds of crime. That means that you do not have to rely upon a conviction before an order can be made for forfeiture of the proceeds of crime. We extended that to include a civil based system, which means that the application for forfeiture can be made regardless of whether there has been a conviction or whether proceedings are pending. That is, whilst charges are pending there can be a civil based application and a judgment made by the court in relation to forfeiture. That was done for a very good reason. We were finding that, by the time a conviction was handed down, the proceeds had long since been dissipated. Criminals—serious criminals particularly—were able to evade the law in surrendering the proceeds of crime. The government comes to this debate fully committed to a civil based forfeiture system.

As Senator Ludwig has said, we acknowledge that other parties have not been so minded. We appreciate that the opposition have been of a similar view to the government in relation to civil based forfeiture. Therefore, we oppose on that basis provisions which would water down any civil based aspect. The Greens are saying that, where someone goes on to be tried and acquitted, you should hand back the proceeds of crime that were forfeited. We say that that is not in the Proceeds of Crime Act and that it is inappropriate to do that. We have always said that an order for forfeiture can be made on the civil standard—that is, on the balance of probabilities—regardless of whether there is a conviction. Having said that, we too oppose the return of proceeds of crime which have been forfeited in the event that an acquittal is obtained by the accused person.

The Greens have also talked about ‘directly’ being a crucial issue for the proceeds of crime. This issue was also raised by the Senate Legal and Constitutional Affairs Leg-
islation Committee. I understand that is more
the subject of the opposition’s amendments
and also is the question of a military com-
misson. Before I address those issues, I in-
dicate we will be opposing the opposition’s
amendments as well—albeit that they cover
a slightly different area and are more focused
in relation to the aspects of a military com-
misson and the causal link of directly and
indirectly between the commission of the
criminal offence and the literary proceeds.
Section 152 (1) (c) of the Proceeds of Crime
Act states that a court may make an order
requiring a person to pay an amount to the
Commonwealth if:
… the court is satisfied that the person has de-
rived literary proceeds in relation to the offence.
That, on the face of it, is quite simple. You
then go to section 153 to see what the mean-
ning of ‘literary proceeds’ entails. It states:

**Literary proceeds** are any benefit that a person
derives from the commercial exploitation of:

(a) the person’s notoriety resulting from the
person committing an indictable offence or a for-
egn indictment; or

(b) the notoriety of another person, involved in
the commission of that offence, resulting from the
first-mentioned person committing that offence.
It is a question of commercial exploitation of
a person’s notoriety which arises from the
commission of that offence. It begs the ques-
tion: what is the link between the commer-
cial exploitation and the commission of the
offence? Is it an indirect link or a direct link?
The Senate legal and constitutional commit-
tee was of the view that the link should be
direct. The government are of the view that it
should be direct or indirect because if you
have been involved in the commission of an
offence then, as stated in the explanatory
memorandum, even your incarceration—a
Chopper Read situation where he wrote a
book about his time in prison—forms part of
the proceeds of crime because you are talk-
ing about and deriving commercial gain from
your experience as a prisoner. You could
write about the offence itself, say the armed
robbery that you committed, or you could
write about your time in prison. We believe
that either should be caught by the definition.
We do not believe it should be directly re-
lated to the commission of the offence itself.
That goes back to a basic principle in rela-
tion to the literary proceeds under the Pro-
ceeds of Crime Act. When making an order
in relation to literary proceeds orders under
section 154, the requirement is:
In deciding whether to make a literary proceeds
order, the court:

(a) must take into account:

(i) the nature and purpose of the product or ac-
tivity from which the literary proceeds were de-
rived; and

(ii) whether supplying the product or carrying
out the activity was in the public interest; and

(iii) the social, cultural or educational value of
the product or activity; and

(iv) the seriousness of the offence to which the
product or activity relates; and

(v) how long ago the offence was committed; and—
there is a catch-all that the court—
… may take into account such other matters as it
thinks fit.
It is not automatic that if you write some-
thing about the offence you will have a for-
feiture order made. The court would have to
look at these other aspects and take them into
account. That gives the background to the
making of a literary proceeds order.

The government believes that terrorists
should not benefit at all from the commission
of their activities, which are very serious and
pose a threat to Australia. We have extended
this to overseas activity. I understand the
objection that the opposition has and why it
thinks we are saying it is not only related to a
conviction overseas, but also it includes a
conviction under a military commission such
as the one dealing with Mr Hicks. We say that such a military commission is part of the law of a foreign country. You could face the situation where someone might be convicted under a military commission in one country and someone else might be convicted by a court in another, yet the person who has been dealt with by a military commission writes a book and gets the money, but the person dealt with by a court in another country could write a book but not receive the proceeds. You have to be consistent; you have to say that, if you have been dealt with in a process that is recognised by the law of a foreign country such as a military commission, you suffer the same restriction as someone who is convicted in a court.

The status of a military commission has been recognised by the government and it enjoys the support of others not in the government in relation to the transfer of prisoners. Certainly in our negotiations with the United States government there has been the aspect of where Mr Hicks might serve his time should he be sentenced and convicted. There is general agreement that the transfer of prisoners regime should apply, and quite rightly. I am very strong on that. I have always supported the transfer of prisoners regime, even in opposition. On one hand we are saying, ‘Look, we’ll recognise the military commission as being a sentencing tribunal, and for the purposes of that the transfer of prisoners will apply.’ But on the other hand, we cannot accept that when it comes to literary proceeds. I appreciate the points made by the opposition in that regard, but the government still thinks it is more consistent to include a military commission.

Basically I have covered the points which I think will be made by the opposition—perhaps I am pre-empting them. I can comment further on that when Senator Ludwig moves amendments. As I say, I think the opposition’s amendments have a narrower focus than the Greens amendments. We believe that these three Greens amendments really do strike at the heart of the civil based forfeiture system and, for that reason, we oppose them. It is not just terrorists we are talking about here; it is criminals—serious criminals—who could benefit from the literary proceeds derived from the commission of their crimes.

Senator GREIG (Western Australia) (10.45 a.m.)—Minister, is it not the case, though, that the recognition of military commissions and any sentencing and jail term that may follow are not necessarily mutually exclusive to the transfer of prisoners? By that I mean could it not be the case that the Australian parliament does not officially recognise military commissions but, in the event that, for example, Mr Hicks is found guilty of the charges and sentenced to a term of imprisonment, he could nonetheless serve out that term here in Australia?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.46 a.m.)—We had to amend the International Transfer of Prisoners Act to accommodate that. That might have been due to the wording of the act not being sufficiently comprehensive to cover a military commission, because we did not envisage, when the act was debated and passed, that that would be an issue. When you look back at events which occurred, with the benefit of hindsight you think, ‘We could’ve done this or we could’ve done that.’ As a result of this issue, we have amended the International Transfer of Prisoners Act to include military commissions, because I do not think it was really on the radar when we debated the whole question. We had not experienced anyone being sentenced by a military commission or, for that matter, any other tribunal. We envisaged that the sentences we would be looking at would be imposed only by a court. That was, as I recall, the debate at the time. But, of course,
you change legislation to meet changing situations.

Senator GREIG (Western Australia) (10.47 a.m.)—Minister, are you saying quite clearly that, for example, if Mr David Hicks were convicted by the military commission, he could serve out his sentence here in Australia only if the Australian government formally recognises the military commission?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.48 a.m.)—What we have done is amend the International Transfer of Prisoners Act to say, if he is sentenced by that commission, he can come back to Australia and serve his sentence. So there is no additional action needed by the Australian government. The Australian government have done what is needed to effect his transfer to Australia, so whether we recognise the military commission does not arise. That is irrelevant to the transfer, because we have already provided that in the act. We have amended the act to allow specifically for that transfer to occur. It has not been named specifically as attaching to Mr Hicks, but it covers his situation.

Senator NETTLE (New South Wales) (10.48 a.m.)—Thank you, it does answer my question—it is the government’s view that innocent people charged with terrorism or other offences should not be able to profit from telling their story. Can the minister explain to the chamber why the Australian people should not hear about the experiences of Mamdouh Habib and David Hicks in Guantanamo Bay? This is a separate question from whether or not they are innocent—clearly that is yet to be determined by a kangaroo court which is not really going to give us any answer as to whether they are innocent or guilty. But, in relation to the conditions that they have experienced in Guantanamo Bay, why is the government’s view that the Australian people should not hear about the experiences David Hicks and Mamdouh Habib have had?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.51 a.m.)—Section 154, which I mentioned earlier, is relevant here—that is, a court, when making a literary proceeds order, does have regard to a number of matters. I went through it in detail. The purpose of my outlining that to the Senate was to make it clear that it is not an automatic forfeiture. It is a forfeiture which is made after careful consideration of such things as whether it is in the public interest, the seriousness of the offence and how long ago the offence was committed.
The question of educational, social or cultural value is also considered by the court. So if an application was made against someone who had been incarcerated or had been convicted, it is still open to the court to say, ‘We will allow them to have the literary proceeds because we believe it is in the public interest,’ or, ‘It has an educational value,’ or, ‘It has a cultural value,’ or, ‘It was so long ago that it is of no effect,’ or, ‘It was not such a serious offence,’ or the court can take into account such other matters as it thinks fit. This is a decision for the court, not the government of Australia. If someone was sentenced and they then wrote a story of their time, the court would be the body that would decide whether or not a literary proceeds order would be made. And, in deciding that, it would have regard to the social, cultural and educational value of the literary work and how long ago the crime occurred.

I give an example: Nelson Mandela. He was convicted for an offence and was sentenced to a very long time in jail. No doubt if that offence had occurred in Australia, the court would have considered whether his book and the writing of his time on Robin Island was of public interest, whether it had any social or cultural value, the fact the offence was committed so long ago and that times had changed. But the decision would be made by the court, and that is where the Proceeds of Crime Act has the checks and balances. The government say that you should not benefit from the literary proceeds of criminal activity, be it terrorism or whatever. We say that as a starting point, but then we say it is up to the court to make that order. And, in determining that order, the court has regard to all those factors that I have just mentioned. They are the very factors that the Greens have been talking about: whether there is any cultural, educational value or otherwise. But we believe those matters are appropriately judged by a court and not the government of Australia.

Senator NETTLE (New South Wales) (10.54 a.m.)—I thank the minister for his answer. I presume from the minister’s answer that the government will be supporting the next Greens amendments, which will ensure that public interest disclosure is permitted. I want to ask the minister about prison reform in terms of changes to incarceration regimes that may have occurred as a result of former criminals writing about their experiences in prison. Will the minister put that into the same category that he has just described? I am looking forward to his support for public interest disclosure to be permitted. Will the minister consider prison reform changes to be a part of that public interest disclosure?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.55 a.m.)—That is a matter for the court to determine under section 154, quite squarely. I have gone through it at length now. Prison reform is an issue of public interest. It would be up to the court to determine whether it was sufficiently in the public interest. A person’s account of prison life could well contribute to prison reform. On the other hand, it could be quite salacious and one which did not and could sell stories or books and get that person a lot of money. To answer your hypothetical question—and we do not answer hypothetical questions in this situation—we have the matter sufficiently catered for in the section of the legislation for the court to take those factors into account.

Senator NETTLE (New South Wales) (10.56 a.m.)—The minister has said that he believes the matter is outlined enough in the legislation for the court to take public interest into consideration. But the minister has also said quite clearly that he believes where there is public interest then the information
should be able to be revealed. Perhaps we can deal with this when we get to the next Greens amendment, which is about stipulating in the legislation, making it clear, putting it beyond doubt, that the public interest needs to be protected. But perhaps we will leave that until we get to the next amendment.

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

The committee divided. [11.01 a.m.]
(The Chairman—Senator J.J. Hogg)

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<tr>
<th>Ayes</th>
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AYES
Allison, L.F. Brown, B.J.
Cherry, J.C. Greig, B.
Lees, M.H. Murphy, S.M.
Murray, A.J.M. Nettle, K.

NOES
Barnett, G. Bishop, T.M.
Brandis, G.H. Buckland, G.
Campbell, G. Campbell, I.G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Cook, P.F.S.
Crossin, P.M. Eggleston, A. *
Ellison, C.M. Ferguson, A.B.
Fifield, M.P. Hogg, J.J.
Hutchins, S.P. Johnston, D.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Marshall, G. Mason, B.J.
McGauran, J.J. Moore, C.
O’Brien, K.W.K. Payne, M.A.
Santoro, S. Scullion, N.G.
Stephens, U. Tchen, T.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Senator LUDWIG (Queensland) (11.05 a.m.)—The opposition opposes item 24 in the following terms:

(6) Schedule 1, item 24, page 11 (lines 19 and 20), TO BE OPPOSED.

Recommendation 6 of the Senate committee was that item 24 of the bill be amended to remove the words ‘or indirectly’ from the amendments to paragraph 153(1)(a) of the Proceeds of Crime Act. I remind the minister that this was a bipartisan position adopted by Labor and Liberal senators during the committee process. I will not take the opportunity during this debate to go to the report of the Senate Legal and Constitutional Legislation Committee but I am sure the minister is familiar with that report and the recommendations that were derived from it. The opposition’s proposal is a variation on this and would omit item 24 altogether. The sense for this is clear when you consider what the Australian Law Reform Commission said in its 1999 report, Confiscation that counts: a review of the Proceeds of Crime Act 1987, on which the Proceeds of Crime Act 2002 was based. At paragraph 18.57 of that report the commission said:

... occasions may arise when the benefit gained by the person is property characterisable as attributable to the experience that the person has gained as a rehabilitatee and wishes to share with society. In such cases, it would seem inappropriate to mandatorily confiscate that part of the benefit, albeit that, ultimately, it is derived indirectly from the person’s involvement in criminal, or prescribed unlawful, conduct.

When the act is read in this light, item 24 of the bill is entirely unnecessary and unhelpful, particularly when it is accompanied by a statement in the explanatory memorandum. I think it is worth reading what is said in the EM. It says:

... this amendment is intended to vitiate a claim that a person’s notoriety stems from circumstances related to their commission of an offence, such as their place of incarceration, and not from the actual commission of the offence.
Quite simply there is nothing in the act that would enable such a claim to succeed. The act as currently expressed implies no limitation on the required connection between the commission of an offence and the notoriety being exploited. The statement I have quoted from the explanatory memorandum betrays the reality that item 24 is squarely directed at Mr Hicks and Mr Habib, two Australian citizens.

As Professor George Williams pointed out to the Senate committee, in the sense that it seeks to attract punitive consequences to past actions of two clearly identifiable individuals, it has some features of a bill of attainder. He did not go on to say it was one, but he did say it had some of the features and he took the committee through them. Item 24 can only be described as a product of the government’s paranoia about what Mr Hicks or Mr Habib might say about their experiences at Guantanamo Bay some time in the future. The item should be rejected by the chamber. I commend the opposition’s proposal to the chamber. If the government fails to support this proposal, Labor have stated publicly that they are committed to it going forward if we are elected.

I want to deal with a matter raised by the Greens, and I think also by the government, in the last amendment. In the second reading debate I said that it should be acknowledged that the Proceeds of Crime Act already covers a substantial portion of literary proceeds that could be derived from terrorist activity. Labor’s proposal deals with an area that could end up being a loophole. In the second reading debate I said:

The grave and unique nature of terrorism is already recognised in the act, which excludes terrorism from the statute of limitations applying to all other offences. The residual category of terrorist literary proceeds that would not be covered are, firstly, those derived overseas and transferred to Australia or, secondly, those derived from overseas terrorist activity which predates the enactment of antiterrorism legislation in Australia in mid-2002.

So this proposal would apply only within those two boxes and the loophole would be closed as a consequence. It does not introduce terrorist activities for the first time. As I said then, Labor is not opposed to amendments that close those loopholes. Liberal and Labor senators of the committee unanimously concluded that these amendments have a retrospective operation. That was the context of those matters. I think they were the wider issues that were alluded to in the Greens’ amendments during the debate in respect of (1), (2) and (4). In any event, the government should support Labor’s proposal. It removes the word ‘indirectly’. It makes sense, and it ensures that the literary proceeds regime under the Proceeds of Crime Act will work much better.

Senator GREIG (Western Australia) (11.12 a.m.)—The opposition’s proposal to oppose item 24 removes the reference to indirect notoriety from an indictable offence in relation to the prohibition against literary proceeds. The inclusion of ‘indirect notoriety’ would have included notoriety arising from the detention of a person rather than because the person committed an indictable offence. It therefore goes to the heart of implementing one of the recommendations from the Senate’s inquiry, and the Democrats support that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.13 a.m.)—I outlined previously the government’s position on the indirect and direct link in relation to this issue. One thing I would add to my previous comments is that we are in no way banning or outlawing a person’s ability to write about their experiences. That is simply not the case. The only thing we are restricting is their deriving some commercial gain from the publication of that. If people
were serious about what they had to write about, they might well donate the proceeds of that literary work to a worthwhile cause. If you were writing about prison reform, there are some prisoner or family welfare groups that you may donate the proceeds to and your publication would be totally lawful. In fact, your publication would be lawful anyway. The issue here is whether you derive any commercial gain. This will in no way outlaw, ban or stop anyone’s ability to write about their experiences. That will remain. The issue is whether you should enjoy the commercial gain that flows from it.

Senator GREIG (Western Australia) (11.14 a.m.)—I query, though, the extent to which that is ultimately practical. What if, for example, somebody publishes a book, advertises it over the Internet and sells that book through Amazon or some other Internet source? At the end of the day, can you really prevent somebody from publishing, distributing and profiting if they are working in international circumstances?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.15 a.m.)—Certainly any gain derived in Australia comes within Australian jurisdiction, and that is relatively easy to access. Commercial gain derived overseas can be caught, but of course that is a little more difficult because it is not within Australian jurisdiction. Nonetheless, that does not detract in any way from the need for this sort of legislation. We believe it is a matter of public policy that you should not derive commercial gain from telling your story about your illegal activities and anything associated with that. We believe it is wrong to allow that to happen.

The TEMPORARY CHAIRMAN (Senator Hutchins)—The question is that item 24 of schedule 1 stand as printed.

Question negatived.

Senator BROWN (Tasmania) (11.16 a.m.)—I move Greens amendment (3) on sheet 4228 revised:

(3) Schedule 1, page 11 (after line 16), after item 22, insert:

22A After section 20

Insert:

20A Public interest disclosure permitted

(1) For the avoidance of doubt, where a person has been charged or convicted of an *indictable offence or a *foreign indictable offence the person is, in the absence of deriving any literary proceeds in relation to the offence, permitted to make information relating to their involvement in the offence public.

(2) A court must not make a restraining order in accordance with paragraph 20(1)(d) in the circumstances described in subsection (1).

This legislation has a broad spread to a whole range of domestic applications, but it is aimed directly by Prime Minister Howard at preventing information about what is going on in Guantanamo Bay from reaching the public. It is aimed specifically at preventing Mr Hicks and Mr Habib, even if they are found innocent, from talking about the conditions in which they have been held captive in Guantanamo Bay by the US military and/or by the Northern Alliance or Egyptian secret police prior to being held in Guantanamo Bay. What an extraordinary political piece of legislation this is. It is aimed at protecting Major General Geoffrey Miller, the man who brought in the Guantanamo torture provisions, protecting his mentors in the Pentagon, protecting the Bush White House and protecting Prime Minister Howard’s slavish adherence to the Bush White House, which has set up Guantanamo Bay and illegally incarcerated the two Australians.

Prime Minister Howard did nothing for these Australians while the British govern-
ment, the Danish government, the Spanish government and several others were at least getting some of their citizens out of Guantanamo Bay. This Prime Minister was complicit in the abuse of prisoners in Guantanamo Bay through his total failure to do anything. We have seen Mr Howard go to Washington and say that he will raise the issue of bringing the Australians before this kangaroo court in the United States at an earlier date. He is effectively saying: ‘I understand that they cannot be convicted of any crime in Australia. What is more, by inference, they would not be convicted of any crime in a domestic court in the United States. So I will allow these two Australians to be brought before a concocted court in the United States.' This concocted court is called a military commission, where many of their rights are removed and where, even if they are found innocent, they can be treated as guilty and kept for life if necessary at the pleasure of President George W. Bush.

Then we have this piece of legislation in the Australian parliament which says, ‘Moreover, because I, the Prime Minister, know that this is wrong, because I know that this will be an affront to Australians as they get to know more about it—and the feeling is starting to bite as I go to an election campaign—I will put a ban on Hicks and Habib talking about their experiences at the hands of these abusive captors breaching the Geneva convention before and during their incarceration in Guantanamo Bay.’ What a political spectre this is. What an abuse of a democratic parliament to bring these measures before this parliament. What an indictment of the system whereby the executive rules the House of Representatives and gets this sort of abusive legislation put through the House and then it is left to the Senate to make judgment on it.

The Australian Greens have put an amendment to the chamber which says that we are going to put it beyond doubt here that Hicks and Habib can talk about their treatment on the public record. Let us be specific: our amendment will mean that Mr Hicks and Mr Habib can talk about the conditions at Guantanamo Bay and can talk about the conditions at Bagram Air Base in Afghanistan and that Mr Habib, if he survives this awful period, can talk about his experiences at the hands of the Egyptian secret service after he was handed across, with the foreknowledge of the Australian government, from Pakistan, where he was taken off a bus far from the war front in Afghanistan—unarmed, I might add.

Here you have a government specifying individuals who are going to be picked out and denied the opportunity to talk about their experience at the hands of criminal activists. I am talking here about criminal abuse and breach of international law such as the Geneva convention. You have effectively got the Prime Minister harbouring the notion that criminal activities against citizens of Australia specifically should not be published. So we have this move from a free and open democracy towards the strictures that we know are the hallmarks of a police state. That is what is happening here. Is the media of Australia, through this legislation, going to be denied an account of the experiences of these Australians, whatever the outcome of this kangaroo court in the United States? If the Prime Minister has his way, that will be the case.

Is the Australian public going to be denied information about the conditions in Guantanamo Bay from the direct experience of these men? The British public is not, the Danish public is not and the Spanish public is not. The Afghans who have been returned to Afghanistan, including children, have spoken up about their experiences. But here in Australia it is a different case. There is a political ban by Prime Minister Howard be-
cause he knows with aforethought that he could be politically embarrassed by what he has determinedly allowed to happen in Guantanamo Bay to Australian citizens. He knows that these citizens have been held there at length even after the three American citizens were removed to the jurisdiction of the domestic courts of the United States. He knows he has allowed these Australians to be treated as second rate and, therefore, our nation to be treated as second rate because one law applies to Australians and other nationalities and another law to Americans.

For domestic purposes President Bush could not withstand the growing outcry about the Americans, but Prime Minister John Howard, through concocted laws like this, is bracing himself not to withstand the growing public concern about Hicks and Habib but to deny the public the information upon which that outcry, that response, might be based—to deny the oxygen of public debate, which is information. That is what is in this legislation. The Greens amendment is saying, ‘Sure, take the money that might be made from revealing what is going on there from them, but do not take the information from the Australian public.’ That is not a democracy; that is a dictatorship. It is up to the Senate to see that this does not happen. This amendment simply says that that legitimate information that can be picked up by Australian journalists, by the media, and conveyed to the Australian public must not be denied by this piece of legislation. That is what the Greens amendment will do. It will ensure that does not happen. It removes the doubt that lingers that that is the intent and the outcome the government is seeking to achieve.

**Senator Ludwig (Queensland)** (11.26 a.m.)—We acknowledge the intent behind this Greens amendment, which seems to suggest or affirm the general right of a person to make public information relating to their involvement in an offence. However, when you look at the amendment in the context of this bill, we do not believe there is any doubt that the Proceeds of Crime Act does not affect the right to communicate per se. Consequently, we are not in a position to support the amendment. We think the position enunciated in the Proceeds of Crime Act is clear and the amendment unnecessary.

**Senator Ellison (Western Australia—Minister for Justice and Customs)** (11.27 a.m.)—For the record, can I say that the government totally rejects the outrageous comments that Senator Brown has made in relation to this proposed legislation. This is not an attempt to ban free speech. In fact, Senator Ludwig correctly noted that the Proceeds of Crime Act does not prohibit someone from communicating their point of view or their experience. This legislation says that if you are a terrorist or a criminal you cannot benefit financially from that. This is not a ban on free speech at all. We have seen recent news reports of people having been released from Guantanamo Bay and who have been on the television talking about their experiences. That has been disseminated widely in Australia and the government has not made any move to stop that in any way. The government has no concern whatsoever about any comment by anyone coming out of Guantanamo Bay. We have taken a close interest in the welfare of Mr Hicks and Mr Habib; that has been canvassed adequately. That is being dealt with at the highest level between the President of United States and the Prime Minister of this country. I totally reject Senator Brown’s incorrect allegations in that regard.

To portray this bill as banning free speech is not only mischievous but misleading. It is misleading the Australian public. This bill does not do that. The bill says, ‘You can write your book, but you cannot get financial gain from the publishing of that book if it...
relates to your criminal activity, whether you are a serious criminal or a terrorist.’ At the end of the day, the court makes a decision about the literary proceeds. It is appropriate that the court make that decision—and we say that with great conviction. It should be in the realm of the judiciary to determine that. But we, as legislators, give a clear message to the community of Australia that we do not believe criminals and terrorists should benefit financially from telling their story. That is a simple fact. They can tell the story—there is no question about that in free speech—but should they benefit financially from talking about their criminal experience, their life with al-Qaeda or their life behind bars as a result of their offence? No, and the government is very firm on that. They can tell the story, but they cannot become millionaires as a result of it.

Senator BROWN (Tasmania) (11.30 a.m.)—Here we have an amendment that says that they can tell the story but they cannot become millionaires and the government saying that they will not support it. What are we left to think? It is a removal of doubt amendment, and the minister says that they will not support it.

Senator Ellison—There is no doubt about it.

Senator BROWN—We are left with the government saying that there will be no doubt about it. That is not the case. If there is no doubt about it there is no problem with the amendment. I remind the committee that the aim of this legislation is to deprive innocent people—including Hicks and Habib, who cannot be found guilty before an Australian court according to Prime Minister Howard—of the same rights as other citizens. The minister says that this is not trammelling free speech and rights that citizens have long held to be important in this country. Of course it is. We put in a removal of doubt here because we are on a fast-moving footway of legislation which is aimed to deal with terrorism but which the top Australian legal representative bodies have expressed concern about in its imbalance in restricting unnecessarily the rights of Australians. The government say that they will not support a doubts removal clause and, if I hear it rightly, the opposition says, ‘Nor will we.’

Moreover, we are going to explicitly curtail the rights of innocent Australians and we are explicitly going to aim at endorsing American military commissions to the same level of authority, as far as this legislation is concerned, as Australian domestic courts. This commission is a trumped-up kangaroo court where, for example, if either of the Australians is convicted, their only appeal is to representatives of their military captors. Even then, were they to succeed, President Bush can override it at his magisterial pleasure. And the government here is saying, ‘We will deprive these Australians of rights that other nations have not applied against their citizens.’ This is a doubts removal clause and it should be supported.

Question negatived.

Senator LUDWIG (Queensland) (11.33 a.m.)—I move opposition amendment (7) on sheet 4248:

(7) Schedule 1, item 26, page 12 (line 40) to page 14 (line 6), omit subsection 337A(3).

Labor amendment (7) would implement recommendation 8 of the Senate committee. As you can see through the debate, Labor has taken a significant interest in the Legal and Constitutional Legislation Committee and the report which was bipartisan by Labor and the Liberals. Senator Greig acknowledges that he did write a dissenting report. Proposed section 337A(3) is completely inappropriate and this amendment deals with that.
The term ‘offence against a law of a foreign country’ appears often in Commonwealth legislation. It is deliberately left undefined, which leaves it to the courts to identify and recognise foreign criminal laws. There is no case for creating an exception by specifically referring to offences triable by US military commissions. For the offences which have been drawn up and promulgated by a single lawyer employed by the US Department of Defense in military commission instruction No. 2 by Mr William J. Haines II, the government hangs its hat on the fact that parliament recently agreed to a reference to US military commissions in the International Transfer of Prisoners Act 2004. In an earlier debate during the committee stage the government alluded to that perhaps in recognition that this matter was going to come up later on during the committee stage.

As the government well knows, Labor made clear that support for that exception in legislation was based on its humanitarian purpose to enable Australian citizens detained without charge for more than two years to serve any future term of imprisonment closer to family and support networks. That was made clear and concise and was put forward at that time. There is now no similar justification existing for proposed section 337A(3). It is completely different from that earlier position that was outlined. It is a punitive measure directed at two specific Australian citizens, Mr Hicks and Mr Habib. I commend the opposition’s amendment. The government should remove subsection (3). It is unnecessary. The government knows it. It tries to put a fig leaf before it in relation to the prisoner exchange. There is no relationship to that. The government knows it and it should adopt the opposition’s amendment. It is indeed deeply regrettable that the government has decided to take a partisan approach on this issue and ignore the recommendation of both the Liberal and Labor senators on the Legal and Constitutional Legislation Committee. Again I say clearly for the record: if the government fails to support this amendment, we will implement it if elected.

Senator GREIG (Western Australia) (11.36 a.m.)—Opposition amendment (7) removes the provision in the bill which gives legitimacy to United States military commissions such as those proposed to try detainees at Guantanamo Bay. These commissions have been subjected to international criticism because of their departure from the basic principles governing a fair trial. Given the many flaws in the military commission process, we Democrats believe it would be impossible to have any faith in the verdict of one of these commissions. On this basis, we do not believe that an offence triable by a military commission should be deemed to be an offence against the law of a foreign country. We have consistently voiced our strong opposition to the detention regime at Guantanamo Bay and the military commissions established to try detainees. It would be abhorrent to long-established principles of justice for Australian law to now recognise such military commissions as a legitimate forum for proving innocence or guilt. We agree that the reference should be removed from the bill, and we will be supporting the amendment.

Senator NETTLE (New South Wales) (11.38 a.m.)—As this chamber and many people know, the Greens have a fervent opposition to the detention of not just David Hicks and Mammadou Habib but a raft of other individuals in Guantanamo Bay in the United States. In no way do we believe that this government should be taking the unprecedented step of recognising the military commissions being carried out for detainees at Guantanamo Bay as legitimate, which is what this part of the legislation seeks to do by including it in the Proceeds of Crime Act.
The military commission, as my colleague Senator Brown has already outlined in his contribution on the previous amendment of the Greens, is a kangaroo court. There are not the same laws of evidence that exist in the US military commission as exist in courts here or elsewhere. Evidence is permitted in the military commission—indeed the only evidence that is permitted—that has been garnered through interrogation of fellow prisoners at Guantanamo Bay. In an Australian court of law, if the prosecution sought to include as evidence in the case information that had been gained in an interrogation, it would not be accepted by the courts. In the US military commission—and this government says it is okay for Australians to be tried in that manner—that is the evidence that is permitted. It is my belief that the primary evidence that is permitted is information that has been gained from fellow detainees under interrogation at Guantanamo Bay. That is not acceptable. It is not acceptable in an Australian court. It is not acceptable to the Australian Greens. We should not be recognising the US military commissions as legitimate, which is what this part of the legislation before us today seeks to do.

The opposition amendment that proposes to remove that—which is similar to Australian Greens amendment (6), and which if this wins we will withdraw—should be supported. The Greens will be supporting that because we do not believe in this kangaroo court. It is a kangaroo court in the processes that I have described about the evidence, but it is even more so a kangaroo court in the fact that after a decision has been made by the US military commission one man and one man alone gets to determine the guilt, innocence and sentencing for individuals. So we go through this whole charade of a quasi-judicial process, the kangaroo court of the military commission, admitting evidence that would not otherwise be acceptable in a court of law and making a determination, and then one man—President George Bush—gets to decide the guilt or the innocence and the fate of the individuals. He can completely ignore what has occurred in the quasi-judicial process of the US military commission. It is not acceptable under any terms.

This government should not have accepted that for the two Australian citizens David Hicks and Mamdouh Habib. But this government has said, ‘Sure, yeah, send our guys to your kangaroo court and then we’ll let you, George W., decide.’ That is not acceptable at all. It is not an acceptable way to stand up for two Australian citizens. It is this government’s job to stand up for those two Australian citizens.

Senator McGauran—Do you think they’re innocent?

Senator NETTLE—Regardless of what the individuals have done, it is this government’s job as a foreign representative to stand up to foreign countries for the rights of those individuals to a fair and independent judicial process. What this government has stood up for is not fair, not an independent judicial process. It is a kangaroo court and this government is saying, ‘That’s okay.’ That is the way this government is representing foreign citizens, foreign Australians, who have got themselves there for whatever reason—and that is not the detail we are talking about here, Senator McGauran. We are talking about how this government chooses to represent foreign citizens—how this government chooses to stand up and say, ‘These individuals should be treated fairly in a court of law.’ This government chooses not to do that. It chooses to stand up and say, ‘Whatever. We don’t care. Put them to your kangaroo court and then let George W. decide. That’s all right by us. No worries.’

It is not all right by the United States. The United States did not let that process occur
for the so-called American Taliban. He was tried under the American judicial process, with different laws of evidence than those that are being proposed for the US military commission. It was not acceptable for the United States, but it is acceptable for this government. It is not acceptable to the Australian Greens. It should not be acceptable to this parliament. We will be supporting this amendment which ensures we do not recognise these US military commissions as legitimate, because they are not.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.43 a.m.)—This amendment comes from a recommendation by the Senate Legal and Constitutional Legislation Committee. I acknowledge at the outset the very good work that that committee did in relation to this bill. The government do not see their way clear to support this one recommendation. In fact I think there were two recommendations we did not support. The rest of those from the committee we do support.

In relation to this particular issue, I mentioned earlier that we would have a disparity between someone convicted by a military commission and someone convicted by a court. I gave the example that with this amendment you could have a person convicted of a terrorism offence by the US military commission being able to write about their experiences and derive commercial gain from that, where someone convicted by an Australian, French or Dutch court could not. So we have a disparity which the government believe is inappropriate. We do believe there should be consistency in the application of the literary proceeds prohibition. If you have been involved in terrorism and if you are convicted in a court or by this military commission, which is being set up for the purposes of dealing with those people charged with terrorist offences, then it applies equally that you should not gain any commercial benefit from telling your story.

The military commission has certainly been recognised, as I mentioned earlier with the question asked by Senator Greig, with the transfer of prisoners. We recognised that by changing that act someone sentenced by a military commission could serve their sentence in Australia, so we extended that recognition to the US military commission. We believe it is appropriate to also include it in this bill in relation to people who are convicted by that commission of terrorist offences. We believe the government are being consistent. I can understand what the opposition is saying in relation to military commissions and the reasons for the Senate Legal and Constitutional Legislation Committee’s recommendation 8, but the government believe that on balance we should include the military commission so that there is not the potential for this inconsistency.

Senator BROWN (Tasmania) (11.46 a.m.)—It is normal that in a military tribunal in the United States three—or at least two—attorneys would be backing up the person who has been charged. Is the government ensuring that is the case as far as Hicks and Habib are concerned with the military commission, which is much less a legal forum, when the Australians appear before it in coming months?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.47 a.m.)—I am not aware of there being any order that a person is entitled to three attorneys. I looked at the military orders when I went to Washington in September last year, and we had a good deal of discussion on that. I would like to see where Senator Brown has the authority for that. But I point out, in any event, that I understand Mr Hicks has an attorney appointed by the US government, Major Mori; a civilian attorney of his own.
choice; and an Australian lawyer. So I think Mr Hicks has three counsel—yes, I have just confirmed that he has three counsel—in any event. But I do not recall in the military orders that I saw there being a requirement that a person have three counsel. Certainly there was provision for them to have one appointed by the US military and the ability to have their own counsel as well from outside the US military, and in this case Mr Hicks also has his Australian lawyer.

Senator BROWN (Tasmania) (11.48 a.m.)—So is this the case with military tribunals in the United States, Minister, as against this military commission kangaroo court?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.48 a.m.)—I am not aware of any variation between the two but I will take that on notice and if there is anything further that I can advise the committee of I will do so. When I looked at it in September last year there was nothing which indicated that there was a difference in the number of counsel that could be appointed. That was my understanding but I will check on that and if there is any change I will advise the committee.

Senator BROWN (Tasmania) (11.49 a.m.)—Who will be the senior attorney, or is there provision for any senior attorney, to represent Hicks and Habib before this kangaroo court?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.49 a.m.)—The counsel appointed by the US military is the lead counsel. If your question is as to who is the most senior—and that is normally attributable to the time that a person has been practising as a lawyer or as to whether they have got Senior Counsel status—I would have to check on that. The United States do not have the provision for silk that we do; they may well have their own categories. If you are asking who is the lead counsel, I understand it is the lawyer appointed by the US military, and that is Major Mori.

Senator BROWN (Tasmania) (11.50 a.m.)—No, I am not asking about lead counsel; he is the only counsel that has been appointed by the military so he is both the lead and the least—that is just a use of words. I was asking about senior counsel practised in military tribunal hearings and with experience in appeal. Can the minister tell me if that is the status of Major Mori? If not, can he tell the committee that he will ensure that a person with that status and that experience will be appointed to back up the representation for the Australians in this kangaroo court?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.51 a.m.)—I understand Major Mori has been a military counsel for seven years. He is an experienced person. I understand he does not have appeal experience. The civilian counsel that Mr Hicks has engaged, whose name I do not have, I understand has had solid experience in relation to terrorist offences. He is a New York based attorney. Of course Mr Hicks also has his Australian lawyer. I must say that my own observations of Major Mori have been of a counsel who is vigorous in the defence of his client’s interests; certainly he has not been slow in coming forward in some of his comments. In fact, one of the requirements of the military order is that the person who is charged will be given defence counsel and that defence counsel will conduct ‘a vigorous defence’. I think those are the actual words, if I remember them correctly, so there is a requirement that the defence be one that is committed, and I think you have seen that in Major Mori with his actions and the way he has conducted the defence of his client.
Senator BROWN (Tasmania) (11.52 a.m.)—One cannot help but be impressed by Major Mori, but we know how courts work and seniority and experience have an enormous amount to do with that. We are hearing from the minister that he does not even know the name of the civilian appointee for this Australian, let alone his status. I ask the minister to explain to the chamber the appeals experience of the civilian appointee and who that person is and to inform the chamber of the status the Australian legal representative will have in the US court. Will the Australian representative have the full and equal weight as a legal representative of a person from the US bar?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.53 a.m.)—I am sorry I am not conversant with the US bar but I can tell the committee that Joshua Dratel is the civilian counsel for Mr Hicks. In relation to seniority and experience, it is difficult to gauge a person’s suitability for a particular case. I have often found that people who have been practising for many years may not be as suited to a particular case as someone who is younger with less experience. I think it is a mistake to just say, ‘This person’s senior so they’re very good,’ or, ‘They’re not senior enough.’ You are getting into dangerous waters when you start to analyse each of the counsel concerned and then run some sort of ruler over them and critique their ability. Suffice to say, Mr Hicks has counsel assisting him with a variety of experience: one from the US military, a civilian lawyer from the New York bar and an Australian lawyer.

I am not going to engage in any personal assessment as to the capacities of these three counsel. It would be totally wrong of me to do so. In any event, I do not have the experience with the United States legal profession to give you any opinion—even if I did, I would not give it because it would be my opinion, which is very subjective. I have my own views about Australian counsel and they are subjective. I can assure Senator Brown that this slippery path of saying, ‘This person is better than the other one,’ is a very dangerous process to get involved in. You have to remember at the end of the day that it is the client who has to have that relationship with the lawyer, not the Australian government and not the Australian Greens. From what I can gather there has certainly been no problem with the counsel involved in Mr Hicks’s defence.

On the role of the Australian lawyer: the Australian lawyer does not have the ability at the military commission to examine or cross-examine. Both American counsel have that capacity. The Australian lawyer has a right to be present, to engage in advising Mr Hicks and to be involved in the defence, but the two American counsel have the right to examine and cross-examine.

Senator BROWN (Tasmania) (11.56 a.m.)—Firstly, the minister knows I am not questioning the capabilities of the legal counsel. I was asking for backup legal counsel and the minister has not commented on that. He knows well that the size of the legal team matters. What he has done is say that we do not, as of this moment, know that there is anybody with experience in appeals in Hicks’s legal team. We also know that if this legislation is passed Australian law is going to recognise this kangaroo court, called a military commission, in the United States, but subserviently and obsequiously as ever this government is going to accept that Australian lawyers appearing before this court will not be recognised before the court. They can run messages, they can fill the water bottles and they can do behind the scenes work but they cannot be recognised before this court.
Once again, we have the government obsequiously making Australia second-rate. I do not accept that. The court is okay by the Australian government but the Australian lawyer is not okay by the US authorities to appear before that court. What sort of a two-tiered system does this government run, putting Australia second all the time—all the way down the line? These Australians will be subordinate to a court which is already weighed against them, which breaches international conventions, which is not even up to the standard of a military tribunal and which has been trumped up to make people guilty who would not be found guilty in either an Australian or a US domestic court. What an appalling situation that is; what an ‘Australia is a subservient province’ attitude coming from the Howard government towards the American authorities.

I can assure you that that is not the Greens’ point of view here. We insist on equality. We think this nation is every bit as good as the United States and we think our courts and our legal representation are every bit as good as the United States—and are better than this military commission which, it has become clear here today, an Australian is going to appear before without adequate legal representation. Who asked Mr Hicks about this? Will Mr Habib get legal representation before he makes the decision to sign up to this kangaroo court? The answer is no, this government wants him to make that decision without legal representation, as Mr Hicks had to. It is an illegal process, deliberately denying Australians proper legal advice. So much for the Howard government!

Senator GREIG (Western Australia) (12.00 p.m.)—I ask the minister: is it the case that there is about to be a relevant judicial determination in the United States? I recall reading that a case was either before the Supreme Court or coming before the Supreme Court so that the court could rule on the validity of Guantanamo Bay as an entire legal regime and, presumably, the military commissions within that. I had read that even some very conservative Republican congressmen in the United States had expressed their concerns about the deprivation of civil liberties, the questionable legal regime and whether or not Camp X-ray was lawfully within the US Constitution. So I ask; is it the case that such a determination is being sought in the American legal system? Secondly, if that is the case, is the government monitoring that situation? Is it pursuing and reviewing that legal quest? Has the government given any consideration to, at the very least, waiting for that determination before embracing and endorsing the legal regime through the recognition of these military commissions? Would it not be embarrassing if we were to go down the path of recognising these military commissions, only to find in the short- to mid-term that they have been deemed unconstitutional within the United States itself?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.01 p.m.)—There is no reason to believe that the military commissions are in any way unlawful. As I understand it, the applications that are being made to the US Supreme Court are as to whether that court can entertain a habeas corpus application from detainees in Guantanamo Bay. I suppose it is like seeking special leave in the first instance to apply to the High Court of Australia. They are saying, ‘Can we even get our foot in the door of the Supreme Court for it to hear our application for habeas corpus?’ So it is very much a preliminary step in relation to that. The question of the status of Guantanamo Bay is not involved in that application. It is a question of whether the Supreme Court can entertain that application. So it is at that very initial stage of asking, ‘Can the Supreme Court of the United States even entertain these applica-
tions?’ It has not progressed any further than that. This could involve some time. If that were to go the full distance and you wanted to wait for that then you could be waiting quite some time. The government has always said that both Mr Hicks and Mr Habib should be brought to trial as soon as possible, and we have maintained that since day one.

Question agreed to.

Sitting suspended from 12.04 p.m. to 12.35 p.m.

Senator BROWN (Tasmania) (12.35 p.m.)—I withdraw Australian Greens amendment (6) in view of the last vote. The Greens oppose schedule 1, item 26, in the following terms:

(5) Schedule 1, item 26, page 11 (line 26) to page 13 (line 6), TO BE OPPOSED.

We are opposing that section labelled ‘Foreign indictable offence’. I ask the minister: firstly, will this section be retrospective if it is not removed and if so what is the precedent for that; and, secondly, does this mean that people who are held in foreign prisons will, without exception, be treated differently under the law to Australian citizens if their works come to Australia or if they arrive in Australia?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.37 p.m.)—Senator Brown has asked a question in relation to the retrospectivity of the literary proceeds provisions. These proposed amendments would cover conduct that occurred before the passage of the legislation and profits made before the passage of the legislation. It is important, however, to make the distinction that no retrospective offence is being introduced or applied here. We are talking about the literary proceeds from a criminal offence which has occurred.

The position is justified because the conduct in question has already constituted a criminal offence in a foreign country. In simple terms, that is the predicate offence—the offence against a foreign law has already been committed. The government is of the view, therefore, that the literary proceeds provisions should apply to that. The government notes that the Senate Legal and Constitutional Legislation Committee stated that the amendments that have an element of retrospectivity are consistent with the current application of the Proceeds of Crime Act 2002, which applies in relation to offences or convictions which occurred before its commencement—that is, the regime that is being applied here is the same as that which applied when the proceeds of crime legislation was introduced. The principle is that, if you have been convicted of a criminal offence—in this case, a terrorism offence—it is no matter whether it occurred prior to the legislation or after the legislation; the fact is that you have been convicted of a terrorist offence. That being the case, it then flows that the literary proceeds prohibition should apply.

We are not imposing any offence with this provision. We are not saying that the offence acts retrospectively but we are saying that, if you receive proceeds today from a criminal offence committed prior to the act, it should be caught. We believe it would be inconsistent and inappropriate to say it applies only to terrorist offences which occur after the legislation. That would mean that if somebody was involved in September 11 or another terrorist act—maybe the Bali bombing—they could write a story about it. One of the Indonesian perpetrators of the Bali bombing could be convicted, write a story about it and get proceeds from the sale of their book—they would be protected because they just happened to do that before this bill was enacted. For those reasons, we do not believe that the normal restrictions which apply to retrospectivity are applicable here.
Senator BROWN (Tasmania) (12.40 p.m.)—What is the government going to do about royalties accruing to Nelson Mandela on the sale of his books in Australia, seeing he was convicted of a criminal offence in South Africa?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.41 p.m.)—There would have to be an application for that to be forfeited. The application for forfeiture is a decision made by the Director of Public Prosecutions. As to whether that could be the subject of an application with the passage of this legislation, I will take some advice on that. But in the first case the decision for an application for forfeiture would be made by the Director of Public Prosecutions. In any event, under the Proceeds of Crime Act the court would look at situations such as the one that Senator Brown mentioned and weigh up matters such as how long ago the offence occurred, the public interest element, the educational aspect and whether the individual concerned received any benefit. It may well be that he gave it to a charity. I will take on notice the question of whether it could be caught within this and will get back to you shortly.

Senator BROWN (Tasmania) (12.42 p.m.)—The minister knows full well that, under this law, the royalties to Nelson Mandela would be confiscated in Australia. I could ask about Dai Ching, the great Chinese environmental activist who has been held under house arrest—and about all the democrats who have been imprisoned in China as a result of a Tiananmen Square for nothing more than upholding democracy. They have been found guilty of a criminal offence in a foreign country. We could go to the author of the The Killing Fields—the book goes by a different name, but we all know the film—who was held in Kampuchea. This is abhorrent legislation. It is clumsy, it is repugnant and it must be stopped. This reach is poorly thought out, because this legislation is being rushed through the Senate for election purposes by the Howard government. But the consequences are enormous. We cannot as a nation allow this to happen. The Senate must not allow this to happen. If the minister cannot explain the ramifications of this section, I will move that we report progress so that over the weekend he can get better information.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.44 p.m.)—I can advise the committee that, in the particular instance that Senator Brown has raised, the person concerned is not an Australian national and does not reside in Australia. Therefore, that person would not be subject to the laws of Australia. It is as simple as that. Certainly you could argue that the royalties are received here, but the question is: whom do they attach to? Do they attach to someone in Australia? No, they do not. Do they attach to someone over whom we have jurisdiction? No, they do not. So the example that Senator Brown raises does not present itself in this bill. There may be some other cases where Australians are found in Australia to have been involved in terrorism offences, be they overseas or here, and if they are receiving those proceeds within our jurisdictional power then they would be seized.

Senator BROWN (Tasmania) (12.45 p.m.)—I do not accept that explanation. There is nothing in this legislation that says the person has to be Australian. Indeed, it would be a strange thing if Australians are to be treated in a way that foreign nationals are not. Moreover, we have the case where Nelson Mandela has been, and hopefully will come again, to this country; therefore, immediately he steps off the plane in our territory he becomes absolutely subject to Australian jurisdiction and this retrospective legislation. This is a dynamite provision. It is
fraught with enormous consequences that the government has not thought about. I move:

That progress be reported.

This will give the government time to assess this legislation so that we can be properly informed and not left here to deal with this measure on the run.

Question negatived.

Senator BROWN (Tasmania) (12.47 p.m.)—In that circumstance, the Labor Party has a very great responsibility to support the amendment knocking out this clause; otherwise, it will bear equal responsibility for the consequences of allowing this clause to proceed. You cannot do it. Let me cite the case of a Buddhist nun recently released from Drapchi prison in Lhasa under the government of Beijing. She was serially abused and came very close to dying because she insisted on holding up signs saying ‘Free Tibet’—nothing more or less than that.

There is nothing criminal about this person upholding principles which are core to our democracy in Australia, but she spent years in that repugnant situation under that repugnant government. She has since been released, after a hail of international outrage directed at Beijing. She has gone to Britain and has been invited to come to this country. I have no doubt that she will be writing the memoirs of her imprisonment. Under this legislation, unless the minister can explain differently, she is subject to having the royalties from those writings impounded by this government here in Australia because she has committed an offence against the Chinese government under their laws, many of which would be found wanting in a law court in Australia.

Are we going to wait at the airport for democrats and freedom fighters, for social justice activists and for environmental activists who have been flung into prison by dictators? What about people who have written about their experiences under President Mugabe? This may include parliamentarians who arrive in this country. Are we going to say, ‘You are under the law of this country and will have the royalties from your books confiscated; that is the way this country appreciates your contribution to universally held freedoms and the pursuit of democracy and liberty’? We cannot allow that to happen.

The minister is seeking counsel on this matter. He should not. He should know it and should have thought through all of this. We should be assured that none of the things I am postulating here could be possible under a law going through the Australian parliament. The Greens amendment is to knock this provision out. It is an extraordinarily important amendment. I appeal to the opposition to look at the ramifications of what I am putting to the chamber here and to listen carefully to what the minister has to say in response. If he cannot rule out this consequence of this amendment, it absolutely must not be allowed into law.

Senator LUDWIG (Queensland) (12.51 p.m.)—In referring to Greens amendment (5), its purpose is to remove proposed section 337A in its entirety. It would be clear, if you looked at the Senate committee report into this, that Labor was not opposed to the rest of section 337A. However, we do agree with the conclusion of both Liberal and Labor senators that it is a retrospective provision. There is no doubt that the assertion that was made in the EM to the contrary is in fact incorrect. It was plainly inserted there to spare I think the Attorney-General and the minister any embarrassment that, despite their disingenuous huffing and puffing about Mr Hicks and retrospective laws, they are now implementing a retrospective law specifically to deal with Mr Hicks. In the end, and on balance, we agree with the Senate committee that the retrospective operation of
this section should be closely considered in the three-year review mandated by the Proceeds of Crime Act. That is the course we favour in this instance. That is why in this instance we will not support the Greens amendment.

**Senator NETTLE** (New South Wales) (12.53 p.m.)—We are still waiting for a response from the Minister for Justice and Customs about what is going to happen when people such as Nelson Mandela arrive on our shores and whether they are going to be subject to this law? Whilst we wait for that response, I would like to read a statement that was released to the media yesterday by the Law Council of Australia. It says:

**New Laws May Lead To Lighter Sentences For Terrorists**

Changes to anti-terrorism laws creating new minimum non-parole periods for Commonwealth terrorism offences may discourage suspects from cooperating with authorities and lead to shorter overall sentences for convicted terrorists.

Law Council President Bob Gotterson, QC, condemned the amendments, which were proposed by the Government and agreed to by the Opposition, saying they were an attempt to curtail judicial discretion over sentencing.

“The proposed amendments will mean that an offender, once convicted, will have to serve at least three-quarters of their sentence before being eligible to apply for parole,” Mr Gotterson said.

“We are concerned that mandatory minimum sentencing provisions of this kind will discourage suspects from cooperating with law enforcement authorities as the judicial discretion to take into account such cooperation will have been removed.”

“The new provisions may also lead to shorter overall sentences for convicted terrorists, because they may persuade a judge to deliver a lighter sentence in view of the extra time an offender will serve in custody.”

“This approach means that offenders will be under community supervision—whether in custody or on parole—for shorter periods after their conviction, which is not in the community's interest.”

Mr Gotterson said amendments to change the presumption in favour of bail for people accused of terrorism offences was also an attack on judicial discretion, and an over-reaction to a number of recent cases in which people accused of terrorism related offences have been granted bail.

“In an attempt to bolster their pre-election credentials on security related issues, both major parties have forgotten about the separation of powers and the importance of judicial discretion in administering the criminal law,” Mr Gotterson concluded.

What is the response of the government and the opposition to this statement by the President of the Law Council of Australia?

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (12.56 p.m.)—The question in relation to Mr Mandela has been answered. On the question of the President of the Law Council of Australia, that is his opinion—it is the opinion of the Law Council. What the courts may or may not do, and the prediction of that, is an inexact science, something which I have spent a lot of time advising clients about, and I can tell you that most lawyers do it with partial success. The Law Council of Australia is entitled to its opinion and I respect that opinion, but whether it follows that courts are going to give a lighter sentence is really too simple a statement in the circumstances. You always have to look at the gravity of the offence and the circumstances surrounding it.

As a general rule, to say that there will be lighter sentences I am not too sure would be a conclusion that could be so readily drawn. Our non-parole provisions are very clear. They give clear direction to the judiciary as to where we think things should be or how things should be done, and we are entitled to do that as a legislature, as I said earlier, and the judiciary implements the law.
Senator BROWN (Tasmania) (12.57 p.m.)—I want to proceed a little further. The minister might respond to the case of Ms Lesley McCulloch, who came from the University of Tasmania and who was charged with spying in Indonesia last year or the year before and was held in jail for a period of months. What is the situation with the proceeds from a book that she may write about that experience? Would they be confiscated?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.58 p.m.)—I do not know anything about the detail of that case, and I cannot comment. I would have to know a lot more about the case. In any event, any decision to make an application for forfeiture is for the DPP. But I am not aware of the circumstances of that case. I will take it on notice and see if there is any advice that I can obtain. If we are going to trawl through every possible case of application for forfeiture of literary proceeds, that could be unwise. It is really not the role of this committee to analyse individual cases and bring individual cases into this committee debate and dissect them.

Senator BROWN (Tasmania) (12.59 p.m.)—I would suggest that it is better that we trawl than drop depth charges when we do not know what the explosive impact will be. Let us keep Nelson Mandela in mind and look the example given in schedule 1 of the government’s legislation. So, for example, instead of ‘X’ it would be that Nelson Mandela:

commits an offence against a law of a foreign country at a time when the conduct is not an offence against Australian law—

Mr Mandela—

then derives literary proceeds in relation to the offence and transfers the proceeds to Australia. After the proceeds are transferred, a new Commonwealth offence is created that applies to the type of conduct concerned. An application is then made for a literary proceeds order. For the purposes of the proceedings for that order, the original conduct is treated as having constituted a foreign indictable offence at all relevant times and accordingly an order can be made in respect of those proceeds.

So we ask the question: is the government going to make an application in some cases but not in others? If that is the case, who will be the arbiter of whom we let off from this law? Or are we, as with all other laws, going to make them universally applicable to people in Australia? If we are then I submit that, on the face of this and without a contrary argument from the minister that will hold water, Mr Mandela may well find his monies confiscated in Australia. The same applies to a whole range of people whom history has treated with great respect because of the stand they have made for freedom, for liberty, for democracy, for the environment, for social justice and against injustice. Under this legislation they will have injustice added to injustice in Australia.

The Greens are behind good law that will stop terrorism, but this is simply about penalising people at the other end without discrimination, and it catches the lot. For every bad person who is caught it will catch a whole host of good people. That is extremely bad law and we should not allow it to pertain. The Greens stand very strongly in opposition to this provision in this legislation and will vote accordingly.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.02 p.m.)—I can only say that the government does not make the decision as to the forfeiture. Senator Brown is totally misleading in that regard. The government has nothing to do with the decision in relation to making the application for forfeiture, so let us get that straight. The government does not prosecute in this country; the government does not make these decisions. The Director of Public Prosecutions makes the application for for-
feiture and the Director of Public Prosecutions prosecutes. I cannot tell you what the director will or will not do. It would be totally wrong of you to ask me that question, and I advise you to consider that carefully because you would be inviting me to interfere with the office of the Director of Public Prosecutions. There is no way in the world that any democratically elected government in Australia would have the power over who gets prosecuted and who does not. That is kept deliberately at arm's length from politicians and the government.

The question was framed in terms of whether the government would seek the forfeiture. I can tell you that the government does not seek the forfeiture of anything. That decision is squarely in the domain of the Director of Public Prosecutions. As soon as we get that straight, we can take out the rhetoric designed to mislead people in this debate. This is a proposal which follows the regime of the proceeds of crime, which we have in place and which has been working well now for nearly a year and a half. The government stands by its amendments in this bill. It is desirable public policy and it will be carried out by officials in whom we have great trust, and it will be by their own decision, not the government’s.

Senator BROWN (Tasmania) (1.04 p.m.)—Then the Senate needs to hear from the public prosecutor as to what he thinks of being saddled with this responsibility for deciding who will and who will not be the subject of an application under this legislation. Everybody needs to come under it. Let us again have a look at the example given in schedule 1:

X commits an offence against a law of a foreign country—

I have had senior Chinese officials tell me that the Dalai Lama is a criminal and a splitter. This is not about having been found guilty; this is about committing an offence. The Chinese government believes the Dalai Lama has committed offences against their regime. On the face of it, that is caught by this piece of legislation. Are we going to allow that to stand and leave it to the public prosecutor to determine who does and who does not fall within that broad net? We cannot. It would be irresponsible to do so. In the absence of a tight definition by the government of whom it intends to get—and the government clearly set out here to prevent terrorists from profiting from writing about their exploits, but it did not define that and tighten it down; instead, it extended it to all criminal infractions against a foreign country and it removed all time limits. Presumably it means anybody alive under any previous foreign government.

You have only to look around the world now and in the past to see what sorts of governments and what sorts of laws good and noble people have fought against, and who have written about their experiences if they survived—indeed many have not and will not—to know that instead of penalising these people if they come to Australia we should be wanting them to come here. Australians want Nelson Mandela and the Dalai Lama to come, but this law will now hang over their heads. It says that if you come here we can move to confiscate money made from your books. It does not matter what purposes you are putting it to—the minister has said that they might be giving it to charity or that it could have an educative effect. That is not in this proposed law.

And then he says, ‘We’ll leave it to the public prosecutor.’ No, you do not do that. You make it very clear to the public prosecutor what you mean by a law. You do not leave it like this. This is an extremely important matter. The minister may be going to speak again, but so far he has done nothing to allay the very big concerns that we feel
about the limitless ramifications of this particular piece of this legislation.

I wonder what happens in the case of Xanana Gusmao or his wife, who has written about their experiences in East Timor under the Suharto military regime. What will happen to the proceeds of her book? She has been in Australia recently. She comes from Australia. I have no doubt that she will be back. What has the minister got to say about her writings? Is she ensnared by this legislation? If the President of East Timor writes about his experiences, will he be penalised next time he comes to Australia? These questions remain unanswered. I want the government to clarify the matter before we finalise a vote on this bill. I move:

That progress be reported.

Question put.

The committee divided. [1.13 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes............ 7
Noes............ 46
Majority........ 39

AYES

Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.     Greig, B.
Lees, M.H.      Murray, A.J.M.
Nettle, K.      

NOES

Abetz, E.  Bishop, T.M.
Barnett, R.L.D.
Brandis, G.H.  Buckland, G.
Calvert, P.H.   Campbell, G.
Campbell, I.G.  Chapman, H.G.P.
Colbeck, R.     Cook, P.F.S.
Crossin, P.M.   Eggleston, A. *
Ellison, C.M.   Ferguson, A.B.
Fifield, M.P.   Forshaw, M.G.
Heffernan, W.   Hogg, J.J.
Humphries, G.   Hutchins, S.P.
Johnston, D.    Kemp, C.R.
Kirk, L.        Knowles, S.C.
Ludwig, J.W.    Lundy, K.A.
Mackay, S.M.    Marshall, G.
McGauran, J.J.  McLucas, J.E.
Moore, C.       O’Brien, K.W.K.
Payne, M.A.     Ray, R.F.
Santoro, S.     Scullion, N.G.
Sherry, N.J.    Stephens, U.
Tchen, T.       Troeth, J.M.
Watson, J.O.W.  Webber, R.

* denotes teller

Question negatived.

The CHAIRMAN—The question now is that item 26, as amended, be agreed to.

The committee divided. [1.22 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes............ 44
Noes............ 6
Majority........ 38

AYES

Abetz, E.  Bishop, T.M.
Barnett, R.L.D.
Brandis, G.H.  Buckland, G.
Calvert, P.H.   Campbell, G.
Campbell, I.G.  Chapman, H.G.P.
Colbeck, R.     Cook, P.F.S.
Crossin, P.M.   Eggleston, A. *
Ellison, C.M.   Ferguson, A.B.
Fifield, M.P.   Forshaw, M.G.
Heffernan, W.   Hogg, J.J.
Humphries, G.   Hutchins, S.P.
Johnston, D.    Kemp, C.R.
Kirk, L.        Knowles, S.C.
Ludwig, J.W.    Lundy, K.A.
Mackay, S.M.    Marshall, G.
McGauran, J.J.  McLucas, J.E.
Moore, C.       O’Brien, K.W.K.
Payne, M.A.     Ray, R.F.
Santoro, S.     Scullion, N.G.
Sherry, N.J.    Stephens, U.
Tchen, T.       Troeth, J.M.
Watson, J.O.W.  Webber, R.

* denotes teller

NOES

Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.        Greig, B.
Murray, A.J.M.     Nettle, K.

* denotes teller
Question agreed to.

In division—

Senator Brown—I want to declare a potential pecuniary interest in the matter. I have been fined for blocking a road in the Tarkine and I have written about that and received royalties.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.26 p.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [1.28 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 43
Noes............  6
Majority......... 37

AYES

Abetz, E.  Barnett, G.
Bishop, T.M.  Boswell, R.L.D.
Brandis, G.H.  Buckland, G.
Calvert, P.H.  Campbell, G.
Carr, K.J.  Colbeck, R.
Cook, P.F.S.  Crossin, P.M.
Eggleston, A. *  Ellison, C.M.
Ferguson, A.B.  Fifield, M.P.
Forshaw, M.G.  Heffernan, W.
Hogg, J.J.  Humphries, G.
Hutchins, S.P.  Johnston, D.
Kemp, C.R.  Kirk, L.
Knowles, S.C.  Ludwig, J.W.
Lundy, K.A.  Mackay, S.M.
Marshall, G.  McGauran, J.J.J.
McLucas, J.E.  Moore, C.
O’Brien, K.W.K.  Payne, M.A.
Ray, R.F.  Santoro, S.
Scullion, N.G.  Sherry, N.J.
Stephens, U.  Tchen, T.

Troeth, J.M.  Watson, J.O.W.
Webber, R.

NOES

Allison, L.F. *  Bartlett, A.J.J.
Brown, B.J.  Greig, B.
Murray, A.J.M.  Nettle, K.

* denotes teller

Question agreed to.

Bill read a third time.

TOURISM AUSTRALIA BILL 2004
TOURISM AUSTRALIA (REPEAL AND TRANSITIONAL PROVISIONS) BILL 2004

Second Reading

Debate resumed from 15 June, on motion by Senator Troeth:

That these bills be now read a second time.

Senator O’BRIEN (Tasmania) (1.32 p.m.)—The Tourism Australia Bill 2004 and the Tourism Australia (Repeal and Transitional Provisions) Bill 2004 implement the structural reforms of Commonwealth funded tourism bodies outlined in the tourism white paper. These bills bring together the Australian Tourist Commission, the Bureau of Tourism Research and the Tourism Forecasting Council into one new tourism marketing body entitled Tourism Australia. See Australia, the domestic marketing organisation, will, I understand, be brought into Tourism Australia by mechanisms outside these bills. These bills also create a new body within Tourism Australia to be known as Tourism Events Australia.

Since being appointed as shadow minister for tourism I have had many opportunities for consultation, and have taken them, with the tourism industry. I take this opportunity to thank the many I have met for their time and input. During those consultations I have heard many grave concerns that, rather than enhance our ability to attract world-class international events to our shores—events
such as the Formula One Grand Prix which inject billions into our national economy—
this new body may in fact hinder Australia’s success in this field. Without better details
before us, both Labor and the tourism industry can only hope that Tourism Events Aus-
tralia will enhance Australia’s ability to attract still more international events. We shall
continue to watch the evolution of Tourism Events Australia with interest.

This is critical legislation for a very important and often underrated industry. Tourism
is one of Australia’s most significant export industries. The industry directly em-
ploys more than half a million Australians, many in regional areas, and it generates
around $17 billion each year in sustainable export earnings. Further, Australian tourism
indirectly supports in the order of another 380,000 Australian jobs. The importance of
an industry which keeps nearly one in 10 Australians employed across Australia can-
not be underrated. Given its regional focus, tourism provides one of the few glimmers of
hope to regional Australians still burdened by the ongoing drought and this govern-
ment’s unfortunate choice of agriculture min-
ister. For this reason too, tourism is an indus-
try which should not be underrated—but un-
derrated it has been, most notably by the
Howard government.

At this time this may seem an odd com-
ment to those in the tourism industry who are
currently euphoric about the tourism white
paper, but I would say to them: you have
waited too long for this policy because the
Howard government has never taken you
seriously. Who can forget the Howard gov-
ernment’s first tourism policy delivered in
March 1996? What was it? It was the aboli-
tion of the Commonwealth Department of
Tourism, a decision announced even before
the current Prime Minister was sworn in. Let
us not forget too that, in his first two years as
Prime Minister, Mr John Howard slashed in
the order of $5.5 million from the Australian
Tourist Commission budget when compared
to its 1995-96 levels.

Since March 1996 the Howard govern-
ment has continued to land blow after blow
upon this industry. I refer, of course, to the
fact that this government has slugged the
tourism industry with the goods and services
tax, overseen the Ansett collapse and slugged
the industry with the Ansett ticket tax. With
regard to the GST, tourism is the only export
industry that has been so taxed. Beyond that,
this government has dragged its heels in as-
sisting this vital industry to respond to inter-
national shocks such as the September 2001
atrocities, SARS, the Bali bombing and the
invasion of Iraq.

The Prime Minister has also left the tour-
ism industry in the hands of substandard
ministers. The former minister Jackie Kelly
was so out of touch with the industry that she
dismissed the Ansett collapse as a mere blip.
The current minister, Mr Hockey, who is
excluded from cabinet, will always be re-
membered as Mr HIH for his mishandling of
the HIH insurance debacle. The collapse of
HIH insurance was an event partly responsi-
bile for increasing public liability insurance
costs, which have in turn crippled many tour-
ism businesses and community activities. So
to those who are pinning all their hopes on
the delivery of the tourism white paper, a
still largely futuristic document, I say this:
don’t look at what the Howard government
says it will do; look at what it has done in the
past.

By contrast, tourism is an industry that at-
tracts and has long attracted the commitment
of Labor. For example, it was the much-
loved and very effective Paul Hogan cam-
paign, delivered in the mid-1980s by the
Hawke Labor government, that truly put
Australia on the tourism map, particularly
with the major market of the United States.
The tourism white paper foreshadows an extra $45.5 million for the domestic marketing arm, See Australia. But, as with Tourism Events Australia, my extensive consultations with tourism industry bodies, analysts and state marketing organisations reveal serious concerns about the effectiveness of See Australia.

Labor’s analysis of the Bureau of Tourism Research’s quarterly visitor survey reports for the last two years reveals that, for the year ended 31 December 2003, expenditure by overnight Australian visitors plummeted by $300 million, Australian residents took 1.7 million fewer overnight trips in Australia, Australians spent 4.5 million fewer nights away from home and Australians took three million fewer daytrips during 2003. These figures are extraordinary, especially when you consider that, if ever there was a time Australians would holiday in Australia rather than overseas, it would be now at a troubled time marked by the invasion of Iraq, SARS, the Bali bombing and the international security situation in general.

These figures give us two primary indications. The first indication is that the tourism industry has never done it harder than under this government. The numbers alone cannot convey the stress and hardship experienced by individual tourism operators, tourism-reliant employees and regional communities. The second indication that we can draw from these sinking domestic tourism numbers is that, whatever See Australia has been doing, it is not encouraging Australians to see Australia. Given the imminent election, the demonstrated poor performance of See Australia and the Howard government’s inclination for pork-barrelling in preference to genuine industry assistance, Labor has deep concerns about the government’s funding plans for See Australia. We will watch closely to ensure taxpayers and the tourism industry get value for money.

As part of our usual diligent consideration of legislation, Labor initiated an inquiry by the Senate Economics Legislation Committee into the provisions of the Tourism Australia Bill. It is interesting to note that, although they propose amendments here today, no Australian Democrat senator saw fit to attend that hearing and properly assess the bill. The outcome of the hearing was that Labor undertook to move a number of amendments if needed and determined to move another.

At the time of the hearing, there was great concern amongst the staff of the Bureau of Tourism Research and the Tourism Forecasting Council that they would be severely disadvantaged by the move from the public sector to the new statutory authority, Tourism Australia. Labor undertook that, if required, it would move an amendment to protect those staff. I am, however, happy to report that, under pressure from Labor and the CPSU, the government has now provided transfer and working conditions suitable for affected staff. I congratulate the CPSU for the job it has done in looking after the interests of its members and advise that, as a result, we will now not be moving the proposed amendment.

Also as part of Labor’s diligent consideration of these bills, it took on board considerations and concerns from the South Australian government regarding the reappointment of board members and the regard Tourism Australia must have for state and territory marketing plans and activities. After discussions with Minister Lomax-Smith and the office of the federal minister for tourism, I have been satisfied that these amendments are no longer required, and therefore I shall not move them. Labor will move an amendment in relation to the need to ensure that Australian Indigenous cultural or tourism skills are represented on the board of Tourism Australia; however, I will address that issue in the committee stage.
There is one positive that has come from the neglect this industry has been shown by the Howard government over the last eight years. That positive is the high degree of professionalism in advocacy the industry now possesses. Indeed yesterday, TTF Australia arranged a breakfast meeting for a large group of Labor MPs who recognise the importance of tourism. I want to thank both TTF Australia for arranging the function and those who came to impart their knowledge of the tourism industry to us. I particularly thank the Hon. John Pandazopoulos MP, Victoria’s Minister for Tourism and Major Events, who joined us yesterday to tell us just how the Bracks Labor government has helped make tourism such a success in that state.

The professionalism attained by the tourism industry is evidenced in part by the tourism white paper these bills are to enact. In the wake of the collapse of the Tourism Council of Australia, the industry has regrouped and found new voices in organisations such as the Victorian Tourism Industry Council, ably chaired by the former Labor senator and minister Mr John Button. There are many great peak bodies that bring the needs of this industry to the attention of the nation through their interaction with those of us privileged to serve in this place. Such bodies include: the Queensland Tourism Industry Council, the Australian Federation of Travel Agents, the Tourism Industry Council of New South Wales, Restaurant and Catering Australia, the Australian Tourism Export Council, TTF Australia Ltd and the National Tourism Alliance, who played such a large role in coordinating the industry’s response to the tourism green paper.

Minister Hockey and the Prime Minister like to claim the tourism white paper as their own. Whilst they can certainly claim the delay in its delivery, the truth is that the functional and workable parts of the white paper are the result of the industry’s efforts. In the white paper, the tourism industry has identified high-value niche markets as the future for the growth and prosperity of this industry. In short, the best path to profitability is to steer away from an industry based purely on volume and to target and encourage tourists who will come to Australia for longer periods and spend more whilst they are here.

Besides the issue of profitability there is the matter of the environmental sustainability of the industry. We must ensure that we do not overexpose our unique and fragile land to tourism or, indeed, any other industry. Clearly this is a key objective for the tourism industry, and I think it is reflected in this bill. Labor notes, too, and congratulates the Australian tourism industry on its ongoing efforts to be more environmentally sustainable.

On this subject, I pay tribute to the Association of Marine Park Tourism Operators, or AMPTO, who set an excellent example as an industry acting as a good environmental steward. AMPTO works closely with the Great Barrier Reef Marine Park Authority to continually monitor and improve management of the Great Barrier Reef. It works with its members to ensure that marine tourism remains a minimal impact industry. Through AMPTO, the industry is committed to sustainable practices to ensure the future of the reef and contributes around $1.2 million each year to fund the Cooperative Research Centre for the Great Barrier Reef World Heritage Area. What a great pity it is that the government has not demonstrated the same commitment to the unique environment of the Great Barrier Reef and has seen fit to slash the funding of the cooperative research centre.

Targeting niche markets, in conjunction with the type of environmental stewardship demonstrated by AMPTO and others, is the way forward for our tourism industry. The
niches to be targeted are many and varied. For instance, according to research conducted by Community Marketing Inc., the North American gay and lesbian market is worth more than $US54 billion. North American gay and lesbian tourists travel extensively, with 97 per cent taking holidays in the past 12 months, well above the US national average of 64 per cent. They generally stay longer and spend more than other travellers. That is why I was greatly honoured earlier this year to be asked to launch a series of Australian travel guides aimed straight at the lucrative American gay and lesbian market.

Other niche markets include backpackers. This is a segment with an average yield of more than $5,000 per head and one which provides an itinerant work force that is particularly helpful to regional areas where seasonal work such as fruit picking is vital to the local economy. There are still other key high-yield niches, the targeting of which will deliver a more sustainable tourism industry both economically and environmentally. The focus of the industry in the white paper on targeting high-yield niches is a further reflection of how it is continuing to work even more environmentally sustainably.

Labor take this industry seriously. That is why we have been considering these bills for some time. That is why we have been consulting closely with the industry and with the state tourism bodies, that is why we referred the Tourism Australia Bill to a Senate committee and that is why we have worked in cooperation with the government to expedite the passage of these bills. We will support the bills. We will be moving an amendment, which I will deal with at the committee stage. I look forward to a chance to address that matter then.

Senator ALLISON (Victoria) (1.48 p.m.)—I assure honourable senators that the Democrats did indeed give the Tourism Australia Bill 2004 and the Tourism Australia (Repeal and Transitional Provisions) Bill 2004 the most thorough and diligent scrutiny. On very rare occasions we are not able to get along to committee hearings, usually because there is another hearing on another bill at the same time. However, I assure the Senate that my colleague Senator Ridgeway, who is very close to the tourism industry in terms of policy and interest, has followed these bills very closely and, I am sure, read every one of your words of wisdom during the committee process, Senator O’Brien.

Fundamentally, in our view, the establishment of Tourism Australia is a very positive move for the Australian tourism industry. We expect that benefits will flow from this body. In fact we called for this reform at least as long ago as the last election. We do, however, have concerns about the Tourism Australia Bill 2004 as it stands, and our circulated amendments address those.

The Democrats are proud to support Indigenous tourism and environmentally and culturally sustainable tourism through our circulated amendments. We are disappointed that the government and the opposition will not support them. It needs to be on the record that the Democrats are committed to strengthening Indigenous tourism through Indigenous representation on the Tourism Australia board. It also needs to be on the record that the Democrats continue to support environmentally and culturally sustainable tourism, as we did by moving amendments to the Australian Tourist Commission Act. The record should also reflect that the Democrats again advocate merit based, skills based appointment of Commonwealth authority board members. We note that the CPSU decided to support the government’s bill after negotiating successfully for the individual employees concerned. As a result, we are not moving to amend the Tourism
Australia (Repeal and Transitional Provisions) Bill 2004 in terms of employee rights.

I want to speak more broadly about the tourism industry in Australia and the direction in which it is heading. The Democrats recognise that tourism is a huge contributor to the Australian economy in terms of job creation, export earnings and regional development. It is already our fourth biggest national industry in terms of export earnings, preceded only by mining, manufacturing and agriculture. The importance of the tourism industry cannot be overstated. It contributes not only in pure financial terms but also in the sense that the rest of the world wants to come and visit what we are so justifiably proud of.

I do not need to remind anyone that recent years have been difficult for the tourism industry. After September 11, Bali, the collapse of Ansett, the SARS outbreak and the war in Iraq the industry has been doing it tough. It is testament, I think, to the resilience of that industry and the hard work of the people involved that Australian tourism continues to perform well.

The Democrats have consistently supported the industry and we continue to do so. We are committed to working with the tourism industry to help build its capacity and to foster an ecologically and culturally sustainable industry that benefits Australia’s society and economy. The establishment of Tourism Australia is supported by us as a fundamentally positive move for the industry. We certainly expect benefits to flow in internal efficiencies and effective coordination of marketing strategies. However, we believe that the bill as it stands lacks explicit commitment to environmental sustainability and to partnership building with Indigenous people. The tourism white paper did place emphasis on Indigenous tourism, on environmentally sustainable tourism and on rural and regional tourism. These directions have not been comprehensively pursued in the legislation, and we think that is disappointing.

Australia’s unique physical and cultural identity is one of the greatest assets we have and it sets us apart from the rest of the world. In particular, there is a strong, natural synergy between the tourism industry and Indigenous cultures. This synergy lies at the very heart of why people travel and in particular why they travel to Australia. Australia’s unique cultural identity lures people from around the world to travel vast distances to experience a completely different country from their own—one with a unique mix of landscape, climate, people and cultures. Australia’s image overseas relies on the perception that we are clean and green, laid-back and friendly. These are priceless assets. Once this image fades it will be next to impossible to resurrect.

Indigenous tourism contributes millions of dollars to the Australian economy each year and provides a valuable economic base for the regional areas in which these businesses are generally located. We know that Indigenous cultures hold a deep interest for many travellers, especially those from Western Europe and the United States. Seventy to 80 per cent of visitors from these regions come here wanting to experience Indigenous cultures first-hand and to have an authentic and rewarding experience when they do so. Overseas visitors are also serious investors in the Indigenous art industry, which is worth between $100 million and $300 million every year.

Just as the tourism industry needs to be working with government and the private sector to improve our ecological sustainability and how we manage our natural environment so too does the tourism industry need to be a strong advocate of the promotion and protection of Indigenous cultures. I com-
mend the tourist industry as a whole for the steps it has begun to take in recent years to get behind Indigenous people interested in sharing their cultures and knowledge through tourism. Just as Indigenous people are cautious about expressing their culture in artworks that are then sold and enter into the public domain so too is there a similar concern about opening up their communities and country to tourism industries.

On the one hand cultural tourism can present an opportunity for economic benefit, cultural exchange and greater mutual understanding but, on the other hand, it can present a whole new meaning of cultural appropriation and rip-off if it is not done properly—if it is not done in a manner that reinforces the traditions and protocols that have kept the cultural knowledge alive for millennia. That means reinforcing and respecting the fact that Indigenous people are the custodians of their cultures. Their values and ways of doing business need to be respected. This means supporting Indigenous direction and control in the industry.

The opportunities that tourism, and ecotourism in particular, present to Indigenous communities are very enticing but the tourism industry has a responsibility to stand alongside Indigenous operators and work with them to develop the basic infrastructure that can carry an enterprise beyond the start-up phase. The challenge for the broader tourism industry is to be supportive without being too interventionist and to resist the temptation of imposing constraints that do not allow Indigenous people to own the end product or manage it in a way that feeds the very cultures that inspire the enterprise.

The missed opportunity to forge valuable partnerships through Indigenous representation on Tourism Australia is an important thing to consider. Tourism Australia, a body to be based on the tourism white paper, was an opportunity to further develop the budding relationship between Indigenous people and businesses and the tourism industry. The opportunity to ensure the representation of Indigenous tourism has been forfeited for an emphasis on big business. The bill as it stands reflects the interests of the business end of town and a certain disinterest in providing a way forward for Indigenous people as well as the tourism industry.

Despite the fact that the white paper was concerned with strengthening Indigenous tourism, it was also very focused on an individualised approach assisting individual businesses. It is this business focus only that has made it into the bill. The Democrats support Labor’s amendments to include Indigenous expertise as a category of expertise for board appointment. If they were not going to move them then we would certainly do so. However, the ALP amendments do not go far enough. There are five out of 13 business/economic expertise categories. Only four out of the 13 existing expertise categories are not business, marketing or infrastructure specific.

We are committed to the principle of appointment based merit and we have repeatedly moved amendments to have appointments on merit—indeed, we have done so on 23 occasions, and this will be the 24th—wherever appointments are made to governing organs of public authority, such as Tourism Australia. The processes by which these appointments are made should be transparent, accountable, open and honest. Importantly, as the 1995 Nolan commission in the UK sets out, the principles guiding and informing the making of such appointments are: all public appointments should be governed by the overriding principles of appointment on merit, except in limited circumstances; selections on merit should take account of the need to appoint boards that include a balance of skills and background;
the basis on which members are appointed and how they are expected to fulfil their role should be explicit; and the range of skills and backgrounds that are sought should be clearly specified.

The big business focus does not reflect adequately the interests of rural and regional tourism, Indigenous tourism or the environmental and cultural impacts of tourism. As the bill stands, with no requirement for representation of environmental or Indigenous expertise, the board is likely to be very unbalanced, despite the minister’s assurances to the contrary. A genuine commitment to balanced representation on the board would have prompted support for our meagre request for two positions to be reserved for the environmental concerns and the emerging Indigenous tourism industry. As it is, there is no expression of intent, let alone a guarantee, of any representative with environmental expertise or expertise in Indigenous tourism or culture.

We support a board with more members—we will support Labor’s amendment to increase the board size to nine. Indeed, we will be moving to amend this amendment to increase that number to 10. This is definitely a positive move and will allow broader representation on the board of all concerned groups, but we hope to take this further to balance the interests represented on the board by specifying environmental and Indigenous members. Unfortunately, the government has misunderstood the meaning of appointment by merit or skills based appointment. Appointment by merit demands that the expertise categories listed in the bill in clause 14 are not merely options for qualifications. There needs to be accountability in the appointment of board members so that each appointment is openly justified as to the qualifications and expertise of the member and how they fulfil a specific need on the board. Following on from this and in line with the Nolan commission, there must be provision to ensure the full range of expertise is represented on the board.

The Democrats are especially concerned at the diminution of environmental protections in the Tourism Australia Bill. The parliament specifically amended the Australian Tourist Commission Act to include environmental and cultural protections. Now these carefully considered safeguards are being trumpeted in the interests of business. It is possible to have a balance and that is what the Democrats are advocating. I remind the Senate that the provision in the Australian Tourist Commission Act was that in meeting its objectives the commission must work with other relevant agencies to promote the principles of ecologically sustainable development set out in the Natural Heritage Trust of Australia Act 1997 and to seek to raise awareness of the social and cultural impacts of tourism in Australia. There is no longer any reference to the Natural Heritage Trust of Australia Act 1997.

I remind the Senate that a function of the Australian Tourist Commission was to closely monitor and report the effects of international tourism on Australia’s natural environment and society. There is no requirement in the new bill to monitor the effects of tourism on the natural environment or on society in general. I remind the Senate that the Australian Tourist Commission Act required that at least one of the persons appointed as a member by the minister shall be a person who has environmental or socio- logical expertise relevant to the tourism industry. The new bill removes this protection. There is not even a statement in the objects or functions of recognising the importance of safeguarding the environment and of the importance of Indigenous cultural tourism, let alone any onus on Tourism Australia to consider Indigenous tourism or the natural environment in decisions or to actively promote
Indigenous tourism or environmentally sustainable tourism.

The substance of the bill does not sit well with the Democrats’ policy on Indigenous tourism, as I have said. We call on the government to provide leadership and insight in developing the Indigenous tourism industry, but none of that has been provided. Neither does the substance of the bill sit well with our policy on environmentally and culturally sustainable tourism. It diminishes the recognition of the environmental effects of tourism and takes away the requirement of environmental representation on the board. However, I do want to say that the Democrats support this bill. Mechanically, the umbrella body is necessary and good. We recognise the importance of the establishment of Tourism Australia and support the legislation which enables it to get up and running. We hope that the intentions and the assurances of the minister do manage to fulfil the intentions expressed in the white paper and the Senate committee.

In addition to these fundamental concerns, the Tourism Australia (Repeal and Transitional Provisions) Bill contains some worrying indications about the government’s direction on employees’ rights. I commend the government and congratulate the employees on successfully negotiating AWAs. I note that the CPSU no longer holds concerns regarding the terms and conditions for the current employees and no longer requests any amendments. This is certainly pleasing for the employees directly concerned. However, I do want to express a general concern regarding the industrial relations provisions. We are concerned about clause 13(4) which, according to the explanatory memorandum, ensures that the terms and conditions of the current ATC enterprise bargaining agreement will not form part of the non-disadvantage test under paragraph 170XA of the Workplace Relations Act 1996 if a new agreement is negotiated with the staff of Tourism Australia. Essentially, this clause allows for the diminution of benefits gained in an already negotiated EBA. There is no need for this provision if the benefits in a new agreement are greater than in the existing one. It is there purely to allow for benefits to be negotiated away. Although the justification is to have a unified body and one under the agreement, this government seems to think that one agreement must represent the lowest common denominator. The Democrats believe that any hard-fought for benefits should remain, and if they must apply to the new agreement for all Tourism Australian employees for the sake of unity then that is what should happen.

We have also inserted a reporting requirement in our amendments that Tourism Australia’s annual report include reporting on the coordination of Tourism Australia with the relevant agencies safeguarding Australia’s natural environment. This reflects the amendments made by the Democrats in the Australian Tourist Commission Act which, as I have already said, has made one of the functions to monitor and report on the effects of tourism on the environment and society. We are committed to accountability in the area of environmental sustainability.

Also, in contrast to the Australian Tourist Commission Act, there is no specific requirement in the new bill for the chairperson of Tourism Australia to disclose any interests. We realise that the provisions of the Commonwealth Authorities and Companies Act 1997 apply to members of a Commonwealth governing body such as the board of Tourism Australia. However, we believe that, in the interests of accountability, the clearest way to prevent conflicts of interest of any kind is to make a blanket provision three lines long as was in the Australian Tourist Commission Act. The provision of the act currently reads:
If the Chairperson is appointed on a full-time basis, the Chairperson shall give written notice to the Minister of all direct or indirect pecuniary interests that the Chairperson has or acquires in any business or in any body corporate carrying on any business.

It is our understanding that the industry is happy with this additional clear accountability provision. We strongly support the tourism industry and the social and economic contribution it makes to Australia. We are committed to seizing opportunities such as the establishment of Tourism Australia to call on the government to provide direction and vision to the industry. This direction should be in terms of the strengthening of Indigenous tourism and improved environmental sustainability and monitoring mechanisms as well as improved efficiency, marketing, research and economic gains. We understand that the opposition and government will be opposing our circulated amendments. Subject to proceedings in the committee stage, we will be withdrawing our amendments and moving an amendment to the opposition’s amendment increasing the number of board members to 10. We hope this amendment and the assurances of the minister will ensure that Indigenous tourism sector interests and environmental concerns are adequately considered by Tourism Australia.

Senator McLUCAS (Queensland) (2.06 p.m.)—The purpose of the Tourism Australia Bill 2004 and the Tourism Australia (Repeal and Transitional Provisions) Bill 2004 is to finally deliver on the Howard government’s election commitment in 2001 to build a policy framework to assist the tourism industry to grow in the context of the downturn in the sector at the time. Events such as the expected slowing in domestic tourism following the Sydney Olympics, as many of us had used our holidays to in fact go to the Olympics, and the natural fall-off in international travellers following the Olympics, September 11, the loss of Ansett just two days later and SARS have put a huge dent in our tourism market.

Inbound tourism has been growing steadily in Australia since the first big effort in international marketing, the John Brown-Paul Hogan shrimp on the barby blitz. Further, the effect of the imposition of the GST, notably in the domestic market, should not be underrated. Tourism is not like other retail areas, where purchases are largely discretionary, in that there could be no benefit derived from the removal of sales tax. In effect, the GST simply added 10 per cent to the cost of holidaying in Australia, with resultant negative impacts in a very competitive global tourism market environment. So it was in that context that the Howard government launched its green paper. While some of the events could not have been predicted, others could have been. It is my contention, held also by many in the industry, that the process of developing the policy framework should have been started much earlier.

However, here we are with the Tourism Australia Bill, which establishes Tourism Australia, merging four existing organisations—the ATC, See Australia, the Bureau of Tourism Research and the Tourism Forecasting Council. Labor will support the bill, with an amendment that I particularly applaud our shadow minister, Senator O’Brien, for developing. That is an amendment to ensure that persons with skills in Indigenous culture and tourism will have representation on the board. Indigenous tourism is an emerging market which I believe has enormous potential, particularly where I live in Far North Queensland. I commend Senator O’Brien for this amendment.

The tourism industry needs a strategic approach nationally that meshes neatly with state tourism planning instruments that either have been or are being developed. Also, in
my view, it is very important that national planning harmonises with regional planning. Those regional plans vary because of the capacity within each region. I commend also Tourism Tropical North Queensland for the planning work that they have done in order to develop a professional approach to tourism in Far North Queensland. Tourism has been a major driver of economic growth in Far North Queensland. As I have said, the tourism industry is led by Tourism Tropical North Queensland. Whilst it is important to North Queensland, it is incredibly important to the future of our nation and our economic outlook.

I refer to the recent study on tourism’s economic value and tourism policies that was undertaken by Access Economics’s Geoff Carmody and provided to the Australian Tourism Commission in May 2002. The report of this study demonstrates that tourism is indeed big business for Australia. It shows that the combined direct and indirect contribution of tourism in the Australian economy was $59 billion, or about nine per cent of GDP, in 2001–02. Access Economics make it crystal clear that tourism delivers jobs. They say that tourism is a labour intensive activity and that in 2000–01 tourism directly employed 551,000 people, or 10 per cent of total Australian employment. Compared to other growing and high-employment industries, tourism provides a higher share of employment in regional areas. This is particularly the case in my region of North Queensland, where primary industries such as timber, dairy and sugar are suffering for a range of reasons. Tourism is the significant driver of economic growth and the significant employer, especially in regional areas.

In 1994–95, tourism provided 15 per cent of total exports. By 2002–03, this share had fallen to 11 per cent, due in part to the Asian economic crisis, September 11, the war in Iraq and SARS but also as a result, in my view, of this government taking its eye off the ball in terms of marketing. It is, therefore, unsurprising that Access Economics’s view was that support for inbound marketing promotion should be maximised within relevant Commonwealth budget constraints. The evidence suggests that the export returns are worth it. Mr Carmody, I have to say, is not well known for his policies of supporting government intervention in the marketplace, and yet he recognises that an increase of $1 million in ATC promotion generated an additional $11 million to $16 million in tourism export income per annum. Mr Carmody is clearly recommending, firstly, a strategic approach to planning and, secondly, direct Commonwealth funding for marketing.

Speaking to these bills today gives me the opportunity to identify some of the challenges, as I see them, and threats that various sectors in the tourism industry in my region have brought to my attention. I am pleased to note that the white paper advocates increased funds be allocated to data collection. This is generally welcomed in the industry, and I will be following the operational implications of this. However, I would like to make the point, which has been made very strongly by a number of regional tourism businesses, that data collection on a national basis is simply that. It provides very little evidence—and, in fact, sometimes misleading evidence—to regional markets.

A case in point was some years ago when nationally the inbound Japanese market into Australia was actually flattening or slightly on the downturn. If investors or people making decisions about investing in the Japanese market had looked at that, they would have said, ‘I’m not going to put in a hotel. I’m not going to put in the sort of attraction that is based on that Japanese market.’ At the time that national data collection was saying that the Japanese market was on the downturn, the growth in the Japanese market was over
10 per cent in tropical North Queensland. If I have one plea to Tourism Australia, it is to look not only at national data collection but also at regional data collection. The other area that is perfectly the same is Tasmania. I know Senator O’Brien understands this well. We cannot simply look at national data collection, because it actually misinforms decision making both on an investment basis and on a planning basis in some sectors.

The other area of data collection that I am somewhat concerned is not going to be undertaken is that for niche markets. In particular, when I first started working with the gay tourism sector in Cairns in 1976, we did not know anything at all about that sector. We knew that people used to come after mardi gras but we did not know how many and we did not know where they stayed—except for Turtle Cove, because it was a gay resort—so we had to build that data all by ourselves. I would like to think that Tourism Australia could actually do some of that work to find out not only the numbers of people that are going into certain markets but also the types of people, so that we can be strategic in the way that we do our marketing. As Senator Allison also said, the northern European market really appreciates understanding Indigenous culture. Once again, it is not an area that we know a lot about. I suggest that we need some data collection based on visitor expectations of the Indigenous experience. I look forward to ongoing discussions with Tourism Australia on these important data collection services to ensure that they are available to regional tourism and niche markets around the country.

Ongoing promotional initiatives in more established niche markets—such as the environmental, backpacker, dive and gay visitor segments—would also facilitate further growth in these markets. We in North Queensland are already very competitively positioned in these segments despite a very dis-appointing threat to our natural brand values that has been posed in recent times. That threat is the Howard government’s failure to protect our reef and rainforest research capacity, by refusing to re-fund the reef and rainforest cooperative research centres. The failure to protect our environmental and scientific research capacity does not go down well with visitors to the Great Barrier Reef, the world’s No. 1 ecotourism destination, or the Daintree World Heritage Area. This decision has been almost universally condemned by the community of Far North Queensland, including the tourism industry and marine park tourism operators. That is little wonder, because if we hope to continue to attract environmental tourists we have to protect our brand values at all costs. You simply cannot say ‘come to clean and pristine world heritage areas’ and then allow the canopy crane, a fantastic scientific research tool, to be dismantled—for that will be the impact if the CRC funding situation is not going to be addressed. We know that the canopy crane that exists in the Daintree area will be dismantled if the CRC is not re-funded. That will be a blow not only to the environment and science in tropical North Queensland but also to tourism.

I commend AMPTO, the Association of Marine Park Tourism Operators, for the work that they have done and for the support that they have shown for the reef CRC. AMPTO provide a board member to the CRC, and everyone would understand that they were absolutely horrified by the notion that all of the investments that the marine park tourism operators have made, both in kind and in cash, over the life of the reef CRC are now about to fizzle away in front of their face. The anger of both the land based and the marine based tourism industries in North Queensland is palpable.

You simply have to walk the walk and talk the talk environmentally, or all of the adver-
tising, promotion, positioning and strategic planning that you might want to do will not save the integrity of our brand values in ethical consumer segments. I welcome the head bill’s improved operational framework and marketing support mechanisms. I commend the tourism industry for the professional way that they have ensured that their voice has been heard by government. They are a slick operation. I commend the work that they have done. It has been put to me that the white paper does not actually belong to the government but in fact belongs to the industry, because they have been so aggressive in making sure that their voice has been heard. I reiterate what my colleague Senator O’Brien has said about Labor taking this industry very seriously indeed. That is why we have worked cooperatively to expedite the passage of these bills. I join my colleagues in support of them.

Senator ABETZ (Tasmania—Special Minister of State) (2.19 p.m.)—I commend the Tourism Australia Bill 2004 and the related bill to honourable senators. In commencing my remarks, I congratulate the minister responsible, Joe Hockey, for his very consultative and wide-ranging approach in coming to what we have before us—this bill. His development of the green paper and then of the white paper shows the wide community consultation that occurred. I also pay tribute to Parliamentary Secretary Warren Entsch, the member for Leichhardt, for the great role he has undertaken in his responsibilities for the Australian Tourism Development Program, which largely focuses on regional tourism, and also for his role in driving the restaurant and caterers national action agenda. In both those roles Mr Entsch is deeply involved with small business and the regional communities of Australia. Coming from a regional seat such as Leichhardt, Mr Entsch is well suited to that job and has received many accolades right across the country. I am representing the state of Tasmania, as you do, Mr Acting Deputy President Watson, which is about as far south as you can go in Australia, and of course Mr Entsch is representing the seat that stretches to the northern extremities of Australia. He is very welcome and is highly regarded in our home state of Tasmania for the work that he does.

The highlight of the coalition’s $235 million tourism white paper is structural reform and the establishment of Tourism Australia. Those who have contributed to this debate have mentioned the basic mechanics associated with those changes, so I do not necessarily intend to delay the Senate by going through them again. I acknowledge the work of the Senate Economics Legislation Committee inquiry. They came up with a few ideas which we as a government were willing to accept and incorporate. As a result of constructive discussions between the government, Labor and the Democrats, I understand our positions in this debate are now pretty well sorted out and we know that which is supported and that which is not supported. I simply thank honourable senators for their cooperation in that regard because it does assist in transacting the business of the Senate. In general terms, the government will support the amendments which will increase the overall size of the Tourism Australia board, by two to a total of 10, and also the amendments which will see a broader expertise base in the areas outlined in clause 14 of the Tourism Australia Bill.

The Australian Democrats have proposed some other amendments, which will be opposed. I understand that Senator Allison and the Democrats are aware of that. In relation to the amendments on the environment, the government is fully aware of the importance of the natural environment in growing a sustainable tourism industry. As a result, it is a key plank of the tourism white paper. The bill and the accompanying memorandum
adequately provide for Tourism Australia to have regard to the development of a sustainable tourism industry, including the development of an industry that takes regard of the environment. I think we would all agree that the future of tourism in our country is dependent on the preservation of our unique natural environment, and the bill already supports this goal. For example, Tourism Australia’s objectives include helping to foster a sustainable tourism industry in Australia. I refer honourable senators to clause 6(d).

In relation to disclosures of interest by the chair, in principle I can understand where the Australian Democrats are coming from but it is otiose and unnecessary to include the proposed amendments, because the Commonwealth Authorities and Companies Act 1997 applies to Tourism Australia. As a result, the provisions of that act relating to directors’ duties of disclosure apply to board members of Tourism Australia, and we as a government do not believe that extra amendment is necessary.

I will quickly turn to a few of the comments that were made during the debate that I think need to be addressed. In his contribution Senator O’Brien referred to alleged cuts in relation to tourism when we first came to government in 1996. I would have thought Senator O’Brien would be studiously avoiding that topic. You will recall that when we came into government in 1996 the Labor Party, who had faithfully promised the Australian people that the budget was in surplus, in fact left us with a $10.3 billion recurrent budget deficit and a $96 billion debt, owed by the Australian government. So when we did come to government and the books were opened, we did have to take some fairly serious action. I am pleased to say that the portfolios of education and Defence were spared from cuts, but unfortunately some tightening of the budget had to be undertaken right around government because of the profligacy and irresponsibility of Labor. So I am surprised that Senator O’Brien would have sought to remind the Australian people about Labor’s history in that regard.

He then descended into a bit of a character assassination of former Minister Kelly and the current minister, which was somewhat mean spirited and unnecessary in this debate, I would have thought, where we basically have cooperation over the bill. Suffice to say that the complaint that the tourism minister is not in cabinet is not exactly an allegation or a criticism that is able to be made by Senator O’Brien, when one recalls that after the leadership change in the Labor Party, it was reported by virtually all commentators that Senator O’Brien suffered a humiliating demotion in the ranks of the shadow ministry. For him to raise that topic as well quite frankly astounds me; unless he thought that somehow I would not be reminding myself of that fact.

Rather than going into those sorts of attacks, what the Australian Labor Party really need to do is come clean with the Australian people. Will they be supporting the use of government money that is currently available for—guess what—advertising and promoting? I thought that was something that Mr Latham was opposed to, yet those opposite talked in glowing terms about government advertising on this occasion.

In relation to the tourism industry, we as a government do not seek to stovepipe various industries. Unfortunately, when you listen to the Labor Party’s contribution you see that that is what they are doing. For example, our AusLink package, which you read about under the transport portfolio, will provide a fantastic road and rail network for this country that will be of great benefit to the tourism industry. Similarly, tucked away in the transport portfolio you will read about the $43 million to be spent on the Bass Strait Passen-
ger Vehicle Equalisation Scheme, which is so very important to our home state of Tasmania, Mr Acting Deputy President Watson. That has been the foundation for the state government being able to buy not only a second but also a third ferry for Bass Strait crossings, which has seen a huge boom in the tourism industry in Tasmania. That was not because the state government bought some ships but because the federal government provided an equalisation scheme that now provides over 20 per cent of TT-Line’s operational costs. Without that funding, the extra ships would not be there; and without that funding, the extra tourists would not be in Tasmania.

Similarly, under the tax policy you would see the change in the wine equalisation tax, something that you and I, Mr Acting Deputy President, have fought for very hard within the government, ever since the changes to the new tax system in 2000. Whilst that is tucked away in the tax policy after years of battle, that is going to be really beneficial to wine tourism, which is a growing and burgeoning industry not only in Tasmania but in other parts of Australia as well. As a government we take a holistic approach, and we have benefits for the tourism industry scattered through virtually every single portfolio.

In relation to the contribution by the Australian Democrats, I congratulate them on their genuine concern for the environment, their genuine contribution and the hard work that they undertake in this chamber. They stand in such stark contrast to the behaviour of others in this chamber who seek to champion the cause of the environment, yet—yet again—on this occasion are missing in action. In my home state of Tasmania the Greens continually tell us that we do not need a forestry industry, because tourism is the future. If they honestly believe that, why are they not here contributing to this debate? They do not actually believe in tourism; they are just anti and negative. In contradistinction to that, I congratulate the Australian Democrats for their contribution.

I turn to Senator McLucas’s contribution and acknowledge her desire for extra CRC funding. Cooperative research centre funding should not be left to politicians to dole out like a Ros Kelly with her whiteboard. Clearly, Senator McLucas is suggesting that we as a government should actively intervene and tell the selection authority which CRCs should be funded and which should not be funded. If they are going to be cooperative research centres of excellence it is appropriate that they be judged by their peers on the basis of their expertise and capacity and not be interfered with in a sort of Ros Kelly whiteboard approach. Senator McLucas has indicated that in future—if Australia were to ever have a Labor government again—they would not learn from the Ros Kelly experience but would adopt the same whiteboard approach to funding cooperative research centres. That is a matter of great regret to me. It would undermine the integrity and reputation—the world reputation—of these institutions if it got around the world community that the funding of these sorts of very important institutions was going to be based on that sort of cheap political intervention.

However, the existing cooperative research centres have secured funding for their current terms. The Cooperative Research Centre for the Great Barrier Reef World Heritage Area will receive $5.5 million in the next two financial years and the Cooperative Research Centre for Tropical Rainforest Ecology and Management will receive $5.6 million. Sure, you can always have more. You can always have a new cooperative research centre. But I think we are doing a pretty good job, based on the rigour of a process that has international support and recognition. The approach suggested by
Senator McLucas is not one that we as a government would support. I do not wish to delay the Senate any further. I conclude by thanking honourable senators for their contribution to the debate and for their cooperation, which I trust will ensure that the committee stages are dealt with relatively quickly. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

TOURISM AUSTRALIA BILL 2004

Bill—by leave—taken as a whole.

Senator O’BRIEN (Tasmania) (2.34 p.m.)—by leave—I move opposition amendments (1) and (2) on sheet 4232:

(1) Clause 12, page 8 (line 23), omit “4”, substitute “5”.

(2) Clause 14, page 9 (line 24), at the end of subclause (1), add:

; (n) Australian indigenous tourism or culture.

Through the white paper the tourism industry has identified that currently Australia meets less than half of the international demand for Indigenous tourism experiences. This represents an enormous forgone opportunity not only for the nation as a whole but also, particularly, for Australia’s Indigenous people.

Tourism has great potential to be used by Indigenous Australians as a tool to help them raise their levels of economic independence and social wellbeing. This is particularly so in remote and regional areas, where poverty and mortality have during the eight years of this government reached levels worse than those of Third World nations, including India.

In spite of the fact that the industry recognises the potential for Indigenous tourism to grow, and despite the benefits it can bring to Indigenous communities and the opportunities to showcase the wonders of our land from an Indigenous perspective, these bills currently have no requirement that the board of Tourism Australia contain knowledge and experience of Australian Indigenous tourism or culture. This is a great shame. To ensure that Indigenous Australian tourism has at least a fair chance to develop, Labor has proposed—and, I understand, the government will accept—an amendment to address this. Labor wants to ensure that industry expertise in Australian Indigenous tourism and culture has a seat in the boardroom of Tourism Australia.

It is pleasing that, after extensive negotiations, Minister Hockey has indicated the government will support Labor’s amendment. Consequential to our aim to have Indigenous tourism and culture represented on the board of Tourism Australia, we also propose an amendment that will increase the size of the board by one. Again, to his credit, Minister Hockey has agreed. I understand that Senator Allison, on behalf of Senator Ridgeway, will move to increase the board by still another member. This will effectively deliver the outcomes for the environmental management and Indigenous tourism and cultural experience we would all like to see represented on the board and does so in a manner more consistent with the rest of the bill. I am pleased the Democrats have agreed only to pursue that amendment and I will be pleased to support that amendment when it is moved.

It is a very happy coincidence, as far as I am concerned, that I am the shadow minister for reconciliation and Indigenous affairs as well as the shadow minister for tourism, regional services and territories. Apparently Senator Abetz thinks it is a demotion to have those important portfolios. I do not and I will be very happy to have those portfolios—in government and hopefully in cabinet—when Labor wins the next election. But do not let us presume on the Australian electorate at
this stage. We are here to deal with a piece of legislation. It is easy to have cheap shots during debates in this chamber. I would rather see this legislation passed on the basis of a cooperative approach. But if the debate needs to, then I will attend to other matters as they arise.

Senator ALLISON (Victoria) (2.39 p.m.)—As I have already indicated, the Democrats will support both of these amendments, but I move an amendment on behalf of my colleague, Senator Ridgeway, amending the ALP’s amendment (1). It is circulated on sheet 4264. As Senator O’Brien said, it simply increases the number of board members by another one. It omits “5” and substitutes “6”. I understand the government is going to accept that amendment.

I have a couple of points to make about the minister’s comments. The minister says this legislation needs to express the importance of the environment and that it already fosters a sustainable tourism industry. That is not quite the same thing as fostering an ecologically sustainable tourism industry, and that was really the point we were trying to make. I remember some years ago, I think it was during estimates, I asked the Tourism Commission about world heritage. I asked what sort of priority was put on world heritage areas. Did we have a target and a strategic campaign to promote them, care for them and to make sure they were not loved to death? How did it work? Also, a committee I was on went up to Far North Queensland. I stayed in a motel while we were doing an inquiry up there, and there was no indication that this little place—Cardwell—was wedged between two of the most significant world heritage areas on earth. It seemed there was no promotion whatsoever in this little place. I hope the situation has changed now. This was some years ago, but there was no promotion of the amazing fact that you could stay in one of the most beautiful places in the world and that you were surrounded by the wet tropics and the Great Barrier Reef. It is quite an awe-inspiring prospect and yet there was no indication in any of the tourism facilities up there that this amazing experience was available.

I am sure there were lots of reasons for that at the time, but it seemed to me the Tourist Commission has a role in talking about environmental tourism, ecotourism or whatever you call it, and has a role in making sure that the environment was protected. I am sorry the government cannot see its way clear to inserting a few words to do with the environment and cultural tourism and so on as my colleague has proposed in his amendments, which clearly are not getting support. It is a pity. It is a question of leadership in my view. There do not seem to be any downsides to including those words, but rather a lot of opportunities and symbolic importance in doing so. I move:

Omit “5”, substitute “6”.

Senator ABETZ (Tasmania—Special Minister of State) (2.42 p.m.)—I want to make the government’s position clear. We support the amendment proposed by the Australian Democrats to the opposition amendment (1). I want to briefly engage on Senator Allison’s comments about the government’s regard for the environment. As a government, we believe that sustainable tourism entails three aspects: environmental sustainability, economic sustainability and social sustainability. The explanatory memorandum dealing with Tourism Australia also points to the fact that Tourism Australia and other Australian government agencies, states and territories and local governments will facilitate the development of environmentally sustainable tourism. In fact, the skills of the board also include expertise in environmental management, clause 14(1)(m). I want to put that on the record to show we are seri-
ous about that aspect. When we talk sustainability we do not only talk environmentally, but we also talk economically and socially. I will not be provoked by Senator O’Brien’s comments, and we will leave it at that. Let us hope we can deal with these amendments expeditiously.

Question agreed to.

Original question, as amended, agreed to.

Bill, as amended, agreed to.

TOURISM AUSTRALIA (REPEAL AND TRANSITIONAL PROVISIONS) BILL 2004

Bill—by leave—taken as a whole.

Bill agreed to.

Tourism Australia Bill 2004 reported with amendments; Tourism Australia (Repeal and Transitional Provisions) Bill 2004 reported without amendment; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (2.45 p.m.)—I move:

That these bills be now read a third time.

Bills read a third time.

NEW INTERNATIONAL TAX ARRANGEMENTS (PARTICIPATION EXEMPTION AND OTHER MEASURES) BILL 2004

Second Reading

Debate resumed on motion by Senator Minchin:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (2.46 p.m.)—We are dealing here with the New International Tax Arrangements (Participation Exemption and Other Measures) Bill 2004, which is one of a series of bills which attempt to improve the method and means by which our companies are able to interrelate internationally, to lower the cost of capital, to improve their competitiveness and to deliver better equity within the system. I am not sure it delivers more simplicity, but it certainly does, in our view, advance international tax law that much more. The government would be disappointed if I did not mention the number of additional pages to the tax bill that we are now assailed with—another 56 pages. As I have said before, I think it is about time we introduced an efficiency dividend approach to tax law so that, every time we increase some pages, we have to reduce the number of pages somewhere else. That way the damned thing will stop growing!

There are three schedules to this bill. Schedule 1 to the bill amends the income tax law to ignore capital gains and losses arising from capital gains tax events happening to shares and foreign companies which are held either by Australian companies or by controlled foreign companies in certain specified circumstances. Schedule 2 to this bill extends the existing exemptions for branch profits earned in and nonportfolio dividends paid from certain listed countries to all countries. Schedule 3 to the bill amends sections 448 and 450 of the Income Tax Assessment Act 1936 to reduce the scope of tainted services income. Tainted services income will in general no longer include income from services provided by a company to a nonresident associate or the overseas permanent establishment of an Australian resident.

The Bills Digest and the consideration that has already occurred in the House of Representatives pick up the main issues. In many respects, this is a technical and facilitative bill. I do note that in earlier days the Labor Party expressed some real concerns about being able to afford this bill since, as we note from the explanatory memorandum, it has a financial impact. The concern of the Labor Party was perfectly reasonable in that the financial impact was regarded by the explanatory memorandum as not quantifiable.
That always rings an alarm bell for those people who are concerned that things may have costs and consequences which have not been properly assessed.

This is a technical bill. You might think that 56 pages is not much, but I should point out that the explanatory memorandum is 118 pages. That goes to the complexity of the issues before us. In many cases the complexity of tax change is baffling, but this bill is part of a sequence of bills. It has at its core good policy, which is to improve the way in which the tax act operates for companies which have crossborder relationships and which need to improve their ability to operate overseas. Apart from the concern, which I retain, that we are still not too sure of what the cost consequence of this bill is, we think the broad direction and the initiatives are good ones for Australia. The Australian Democrats intend to support this bill.

Senator SHERRY (Tasmania) (2.50 p.m.)—I would firstly like to thank Senator Murray for giving us an update, on each occasion we deal with yet another tax bill, on the number of pages we are adding to tax law in this country. I would be interested in the cumulative total on a historical basis, Senator Murray, if you have got the data at some future date.

Senator Ferguson—Keating still put more in.

Senator SHERRY—I thought the current Liberal government’s claim was that we actually have a simpler tax system now. If we stacked all these tax bills on the floor, I think they would probably be a metre high in terms of additional tax pages. It is a complex tax bill that we are dealing with. Again, as Senator Murray pointed out, the explanatory memorandum is double the size of the 56 pages of the bill itself.

The New International Tax Arrangements (Participation Exemption and Other Measures) Bill 2004 is the third tranche of legislation implementing the government’s reforms to international taxation announced in the 2003-04 budget. These reforms were the result of a long process of consultation with industry, which began by offering the hope of substantial reform to meet the challenges of globalisation and the international issues relating to Australia’s international taxation regime. These hopes have been dashed. The measures in the bill represent a small set of changes that are intended to reduce compliance costs and remove some completely unnecessary impediments. The Labor Party will support the bill after having looked in great detail at the cost which, as Senator Murray has pointed out, we have raised on a number of occasions. When Labor see a piece of legislation that has no quantifiable cost to it and which obviously has some changes in the tax area, we do like to know what the cost is and who will benefit.

Schedule 1 of the bill introduces a capital gains tax exemption for active foreign companies. Currently, capital losses and gains from the disposal of interests in foreign companies are included in a company’s taxable income in Australia. In addition, any capital gains or losses made by a company, controlled by an Australian shareholder from the disposal of interests in a foreign company, may be included in the taxable income of the Australian shareholder. The inclusion of capital losses decreases tax payable and the inclusion of capital gains increases tax payable in Australia.

The amendments to the bill will disregard gains and losses to the extent that the foreign company has an underlying active business, allowing Australian multinational companies, and the foreign companies that they control, to compete more effectively in capital markets. The amendments will provide Australian companies with greater flexibility to restructure their offshore operations, as
restructuring will no longer trigger a capital gains tax liability in Australia.

Australian companies with offshore businesses will, however, lose the ability to reduce their tax payable in Australia when offshore ventures fail and they suffer a capital loss. Companies will be required to calculate the extent to which overseas operations affected by the capital gains tax concession represent an active business, and the exemption will only apply to the extent that the shares in an overseas business are related to an active business. If companies fail to undertake this calculation, the default position will be that all capital gains and no capital losses are included in their taxable income in Australia.

Schedule 2 of the bill provides a tax exemption for foreign branch income, non-portfolio dividends and amends the listed countries provisions. Non-portfolio dividends are dividends from direct overseas investments, where the Australian taxpayer has some control over the foreign operations—for example, profits from an overseas branch. Currently, branch profits from the 62 listed countries are not subject to tax in Australia. The amendments will extend this exemption to all countries.

As Australian tax will not be paid, the profits cannot be used to provide franked dividends to shareholders. So, if and when these profits are distributed, they are taxed at the shareholders marginal tax rate. This caveat and the strong preference for Australian shareholders to receive franked dividends is an important integrity safeguard. The amendments will enable Australian companies to repatriate foreign profits back to Australia and expand their offshore active business operations.

Where passive or highly mobile income is shifted offshore, it will continue to be taxed under the controlled foreign company rules. For example, these amendments will only apply to legitimate active foreign business and not passive investments that are generally associated with tax avoidance. Consequential amendments will also remove foreign tax credits for foreign company tax—rules which allow companies to effectively reduce their Australian tax payable by the amount of foreign tax paid. The amendments will also simplify the categorisation of foreign countries.

Under Australia’s international taxation regime, countries are categorised into unlisted countries, limited exemption listed countries and broad exemption listed countries. Under the proposed amendments, limited exempted countries become unlisted countries, together with those already classified as ‘unlisted’. Countries currently classified as ‘broad exemption listed countries’ are referred to as ‘listed countries’. This simplification is possible because the exemption previously provided to limited exempted listed countries is now extended to all countries, removing the need for differentiation for all but one remaining section of the law.

Schedule 3 of the bill reduces the scope of tainted services income and will improve the competitiveness of Australian companies. The tainted services income provisions aim to ensure that groups of associated companies cannot shift profits around through the provision of services from one company to another. This is particularly important where the provision of these services involves, effectively, shifting profits from Australian based companies to foreign associates which can, therefore, be used to reduce tax in Australia. The tainted services provisions cur-
rently work by attributing income to the Australian based company when a foreign associate provides services to another foreign associate, a resident company in Australia, a non-resident company in Australia or a permanent Australian establishment overseas.

The amendment to this bill will narrow the scope of the tainted services provisions by removing services provided by a foreign associate to another foreign associate or a permanent Australian establishment overseas. The amendment is appropriate for two reasons. First, it will ensure equal tax treatment between foreign associate companies that generate certain services in-house and companies that use the services of an associated company—for example, a company which has internal IT support versus a company buying IT support from an associate company. Second, under the amendments in schedule 2 of this bill, income from services provided by one foreign associate to another will no longer be taxed in Australia. Labor will be supporting the bill.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (2.59 p.m.)—The New International Tax Arrangements (Participation Exemption and Other Measures) Bill 2004 is the third instalment in the government’s package of reforms to Australia’s international taxation arrangements. It follows the enactment of the new tax treaty with the UK and reform of the international tax rules affecting superannuation funds and the funds management industry which were passed by the Senate this week and which now await royal assent. This bill aims to reduce the burden of Australian tax on the foreign business operations of Australian companies and to increase flexibility in dealing with those businesses without undermining the integrity of our tax system. It will make Australian companies more competitive in raising capital for their foreign operations and so better enable them to compete for business offshore. Indirectly this will also improve their ability to compete in Australia.

As you would expect, the bill has been welcomed by business as the most important change to Australia’s international tax laws in more than a decade. The two main measures in the bill will remove Australian tax from the foreign acts of businesses of Australian companies. Whatever foreign tax is payable in the country where they operate will still be payable but no further Australian tax will be payable by an Australian company running that business. The bill achieves this in two ways—firstly, by not taxing foreign dividends and branch profits paid to the Australian parent company wherever the foreign business carries on its act of business. This frees up capital for reinvestment by Australian businesses and removes a disincentive to expanding active businesses offshore. It will also make Australia a more attractive location as a base for the regional headquarters of overseas companies as well as a continuing base for Australian multinationals. Secondly, if the Australian company sells its shares in the active foreign subsidiary it will not incur capital gains or losses in Australia. This will remove disincentives to companies restructuring and rationalising non-performing foreign operations. Australian companies will now be able to compete on a more level playing field with their global competitors.

These measures allow companies to get on with business offshore with less need to be concerned about an additional layer of Australian tax. As well as reducing tax costs, it will in many instances make compliance with the Australian tax law, which bedevils so many companies, a lot easier. In addition, the bill provides companies with more freedom on where to locate their intragroup service companies by reducing the scope of the tainted services income rules. The services
provided between offshore subsidiaries or branches will no longer be treated as tainted services income. This will improve the competitiveness of Australian companies with offshore operations by allowing more flexibility in dealings amongst offshore associates.

There is overwhelming business support for this bill. Importantly, these measures are not just relevant to big business but will also assist emerging Australian businesses looking to expand offshore to take advantage of global opportunities. All of the measures introduced in the bill have been subject to the excellent consultation process the Treasury has engaged in with the business community that I outlined earlier this week and that was referred to by Senator Murray when debating the second instalment of international tax measures. I commend them again.

I welcome very much the fact that Labor have indicated they are supporting the bill. As everyone in this chamber knows, I have absolutely no hang-ups in giving credit to the Labor Party, the Democrats or indeed anyone when I believe they do the right thing or take the right approach in respect of legislation but, in view of the press following the passage of the bill that we debated earlier this week, I do feel that I need to mention the contradictory positions that Labor have taken towards the measures in this bill. They have indeed sent a very confusing message both in Australia and abroad.

When these measures were announced in the 2003 budget the Labor Party indicated they would oppose them—not, apparently, because they disagreed with the intended aim of the measures but because they objected to prioritising the needs of Australian business. It was surprising when the member for Kingston, Mr Cox, claimed just the other day that the tax reforms in this bill do not go far enough. He apparently said that Labor wanted a debate on more fundamental reform including dividend streaming and a tax credit for foreign dividends. Mr Cox’s position seems to be that the government should have cut more tax on international arrangements. It seems that the member for Kingston believes that we should cut taxes and do more in this area but the member for Lawler, Ms Gillard, said she believed that the tax cuts should not have been passed. At the same time, the member for Fraser has indicated a position that the same money should be invested in an intergenerational fund to save for the future. It is a fair comment to say that the confusion amongst the front bench of the ALP over how they would manage the Australian economy and more particularly tax policy is a matter of concern to every business, every community and every taxpayer.

We would have a situation where we tax less, spend more, invest it in a fund for future use and still have it left at the end of the day, and it is still the same $270 million. It seems to be the holy grail of creative accounting—a magic pudding theory of cut and come again. In stark contrast the Howard government understands that creating an environment in which business can prosper is essential. Company profit share as a proportion of GDP is the highest ever recorded in Australia. This is not because company tax rates have risen; this government has actually cut corporate rate taxes from 36 per cent to 30 per cent and we have never had such strong company collections. The revenue increase in the budget from mid-year was essentially in relation to company tax of $1.8 billion. A large part of this strength in company tax contribution to revenue can be attributed to sustained economic expansion and the determination to tackle the big structural tax reforms that this country and this economy need in the face of sustained opposition. The ability to not only argue the case in respect
of tax cuts but also actually take the big decisions and make the big strides in respect of structural tax reform is a hallmark of the Howard government of which I am extremely proud. A strong corporate sector creates jobs and secures critical investment and trade for Australia, all of which are fundamental to our continuing economic prosperity.

Tax reform that benefits business by making it more competitive, which this bill is directed to, represents an investment by government and the Australian community more broadly in securing a successful economy. These tax reforms will mean business is no longer fighting with one hand tied behind its back when it takes on the challenges of competing in the global economy. Removing unnecessary Australian tax considerations from the operations of Australian businesses abroad can only be of benefit to Australian companies and to their Australian shareholders and employees. This is good and sound tax policy. I thank my colleagues Senator Sherry and Senator Murray for indicating their support.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (3.08 p.m.)—I move:

That government business order of the day No. 3 (Taxation Laws Amendment Bill (No. 7) 2003, consideration in committee of the whole of message no. 428 from the House of Representatives) be postponed till the next day of sitting.

Question agreed to.

AGED CARE AMENDMENT BILL 2004

Second Reading

Debate resumed from 16 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator FORSHAW (New South Wales) (3.08 p.m.)—I move:

At the end of the motion, add “but the Senate:

(a) notes that for years the Government has ignored the pleas of the aged care industry, the community and the Australian Labor Party about its neglect of residential aged care, neglect that has caused difficulties in access and industry viability as well as concerns about the quality of care; and

(b) registers its concern that the Government has resorted to a short-term political fix which seeks to put off until after the election the Government’s true intentions on a range of issues, including whether:

(i) accommodation bonds will apply consistently for both high level care and low level care;

(ii) an accommodation bond will apply to residents who are classified as medium care residents under the new resident classification scale;

(iii) there will be a further increase in the maximum daily accommodation charge for non-concessional residents from $16.25 to $19, a nearly 40 per cent increase from the current charge;

(iv) the requirement that at least 40 per cent of residents are concessional before a provider is entitled to a concessional supplement is retained into the future;

(v) bonds will be available to providers for the duration of a
resident’s period of stay if it is greater than the current 5 years;

(vi) an aged care voucher system will be introduced; and

(vii) an auction or tender system will be introduced for the allocation of aged care places”.

The Aged Care Amendment Bill 2004 amends the Aged Care Act 1997, and it is that act that provides the framework for Australia’s residential aged care system. I well recall the lengthy debates on that legislation back in 1996-97, when I represented the opposition as the legislation took its tortuous path through the Senate. I recall warning at the time that a number of the changes to the legislation that the government proposed would create significant problems in aged care in the years to come. Unfortunately, that has come to pass. I will come back to that in a moment.

The Aged Care Amendment Bill 2004 proposes two changes to the legislation. Firstly, the amendments to the act will make changes to the aged care assessment process. Secondly, the bill proposes to remove the current five-year limit on accommodation charges for residents who enter high-care facilities after 1 July this year. Essentially they are minor changes in the grand scheme of issues that require consideration in respect of aged care in this country. They are changes that the opposition does not oppose. The two specific measures in this bill reflect recommendations of the Review of pricing arrangements in residential aged care, otherwise known as the Hogan review. The review of pricing arrangements in residential aged care was done under the chairmanship of Professor Warren Hogan. That very extensive report with a large number of recommendations was finally released to the public at the same time the budget was handed down. At the same time, the government released its response to the various recommendations in Professor Hogan’s report. The review process took many months and involved consultations with various interested groups and organisations as well as providers in the aged care sector and the community. I will have more to say about the aged care review undertaken by Professor Hogan later.

The bill proposes to simplify the Aged Care Assessment Team process. Currently, to determine the level of care required by potential residents of an aged care facility, those in need are classified into one of eight different categories of the Residential Classification Scale—the lower the category, the higher the level of care required and so on. The funding that a facility is appropriated depends on the Residential Classification Scale rating for each resident in the facility. So, the higher the RCS classification of the residents, the more funding is provided to the facility from taxpayers’ funds.

Currently, when a resident in a facility that is classified as low care is reclassified as a high-care resident, an assessment must be undertaken by an ACAT team. This legislation will remove the requirement for that assessment to be made at that point in time. As I said, we do not oppose this particular change in the bill. We see advantages in this respect, and indeed it is consistent with the recommendations and findings of the Hogan review. We do note, as has been noted in the Bills Digest prepared by the Parliamentary Library and indeed acknowledged by the government, that there is some fiscal risk to the taxpayer. The Bills Digest notes that abolition of this requirement for assessment may result in a situation where:

... some aged care providers may inappropriately classify residents into more highly subsidised RCS classifications and thereby receive additional funding from the Commonwealth.

We note that the government contends that the risk can be managed through additional
resources for the residential classification review program. This will be something that needs to be monitored over time.

This bill will make changes to arrangements for accommodation charges payable by residents. Residents in facilities currently pay daily care fees and accommodation payments to assist with capital costs. Of course some residents are not required to pay an accommodation charge if they meet certain criteria. The charge that other residents pay depends upon their assets. There are a variety of arrangements that occur in respect of contributions made by residents in residential aged care facilities.

The second change that this bill proposes is to abolish the current five-year limit for those accommodation charges. Currently those patients paying an accommodation daily charge pay that charge for a five-year period whilst they are resident in the facility. The bill proposes that new residents, those entering into high-level care from 1 July this year, pay the accommodation charge for the entire duration of their period in the facility. That means that from 1 July a new resident in that facility will pay the daily charge and will continue to pay it beyond the five-year period. The impact of that, of course, is felt by the resident specifically after the five-year period. Nevertheless, it is a change that will have some impact.

As the Bills Digest itself notes, the amendments to the accommodation charges, both this one in this bill and others that are not covered by this bill, will have an adverse financial impact on certain elderly people who enter high-care residential facilities on or after 1 July this year. As I have said, we are not opposed to the measure. We believe it is a reasonable change. However, we have two concerns which, despite requests to the government, have not been allayed. They are concerns that relate to the broader issue of accommodation charges and other payments made by residents.

Firstly, the government refuses to give an undertaking, despite many requests and questions to the minister in the parliament, that it will not similarly move to remove the current five-year limit on deductions from accommodation bonds in low-care facilities. For those residents in low-care facilities who pay accommodation bonds, a deduction can be made from that bond money for a period up to five years. Those funds are then used, or intended to be used, by the facility for capital infrastructure works.

We are concerned that removing the five-year limit on the accommodation charge that applies to those residents sends a signal that the similar five-year limit on the drawdown on accommodation bonds for residents in low-care facilities may also be removed. We have asked the government to give an assurance that that will not happen. The minister refuses to give that assurance. There is, therefore, a very real fear out there in the community that this will happen and, particularly, that it could happen after an election is held. So I challenge the minister again to give an assurance that that will not happen.

The second related issue, though not part of this bill, is the actual increase in the charge that will apply from 1 July this year. The government has already decided to increase the maximum accommodation charge payable by new residents in high-level care from next month. The maximum amount of that charge payable will increase from the current daily rate of $13.91 to the new daily rate of $16.25. This specific change is not covered by this bill, but it is a related concern. It is a concern because the Hogan review recommended that the maximum rate of the concessional resident supplement—which, coincidently, is the same amount as
the accommodation charge—be increased to $19 per day. The government has, in its re-
sponse, increased, as I have said, the ac-
commodation charge paid by the resident to
$16.25 and similarly the supplement to
$16.25. Therefore the real concern is that,
after the election, we may see a further in-
crease in the charge to that recommended
figure for the supplement of $19 per day. If
that were to occur, that would be an increase
of almost 40 per cent on the accommodation
charge. We have asked the government to
rule out any such increase. The minister,
again, refuses to give that assurance. What
we are continually told by the government,
and what is also in their written response to
the Hogan review, is that they are consulting
on this and other issues with the industry.

That leads me to make some comments
about the Hogan review, because it is the
fundamental basis of examining the future of
aged care in this country. It was a $7 million
taxpayer funded review into pricing and
other arrangements in aged care. We know
from questions asked at estimates that the
broad views and recommendations of the
Hogan review had been arrived at by late last
year, which was when it was anticipated the
report would be released. It was not released
at that time; it was only released in May this
year, coincidentally with the budget. But
everybody in the industry knew what was in
it because Professor Hogan’s recommendations
and views on what was being contem-
plated and what the government was examin-
ing were leaked, were out there in the com-

There has been ample time for the gov-
ernment to consider Professor Hogan’s re-
view and recommendations. But what we
found when we received the government’s
response at the same time as we received the
review was that, whilst the government has
picked up on a number of those recommen-
dations in its budget package, it has left
many of the critical issues unanswered. It has
refused to say what it will do in respect of
many of those key recommendations. For
instance, it refuses to put on the record its
response to whether or not an accommoda-
tion bond will apply to residents who are
classed as medium-care residents under the
new resident classification scale. What is
proposed is that the current division of eight
levels into low care and high care will be
redesigned into three levels of care: low, me-
dium and high. Currently, accommodation
bonds can apply to residents in low-care fa-
cilities; they cannot apply to residents in
high-care facilities. The government tried
that on back in 1996, but it had to back away
from that proposal because outrage—

Senator Patterson—Because your
shadow minister misled the public. Jenny
Macklin was outrageous—

Senator FORSHAW—The minister inter-
jects. The minister should go back and check
the record. The legislation went through this
parliament, but the government ultimately
refused to implement it because of the outcry
from people in the community.

Senator Patterson—I don’t often get an-
gry, but I was outraged about Ms Macklin.

Senator FORSHAW—The minister says
she is outraged. She should have been out-
raged at the thousands of residents and their
families in this country who objected to that
proposal. That is what happened. But what
we want to know from this government now
is: under this proposed three-tier classifica-
tion structure, will the government rule out
imposing accommodation bonds on medium-
level care? Will it rule out imposing accom-
modation bonds on high care in the future?
But the minister, despite being asked on a
number of occasions in question time, re-
fuses to give that assurance. As I said, we
want to know whether the accommodation
charge will be further increased after the
election. These are recommendations that are in the government’s own funded review by Professor Hogan, and all the government can say on these critical issues is, ‘We are undertaking further consultation with the industry.’ The government have had months and months to consult with the industry. They know the industry’s views on these issues, we know the industry’s views on these issues; but the government, because there is an election in the wind, refuses to come clean and tell people what they intend to do. We have put our position on the record with respect to the issue of an accommodation bond. We are opposed to accommodation bonds being implemented in high-level care facilities and in the new medium-level care facilities, and we will continue to put that position.

I will turn very quickly to the two amendments that I have circulated. Our second reading amendment outlines in detail the failures of this government when it comes to its stewardship of aged care since it came to office in 1996. It promised great things through the 1996-97 debates on the new Aged Care Act, but what we have seen is minister after minister in this portfolio be removed. Minister Moylan and Minister Bishop fell by the wayside because they got it wrong. We told them they would get it wrong and they got it wrong. Our second reading amendment draws attention to the various problems that have been created and worsened by this government in the area of aged care since it came to office. We will also move a specific amendment in the committee stage that will ensure that the payment of an accommodation bond is required only for care recipients categorised as low care. I will deal with that in the committee stage. We support the changes proposed in this bill, but there are many other issues in aged care that we will no doubt come to debate in due course.

Senator ALLISON (Victoria) (3.28 p.m.)—The two measures introduced today in the Aged Care Amendment Bill 2004 are the first of the legislative measures introduced to enact the government’s response to the Hogan review as outlined in the government’s recent aged care budget package. While the Democrats welcome these measures and, indeed, some of the measures that will no doubt come before us at a later stage, we continue to hold concerns that this overall aged care package will go only part of the way to addressing the needs of the aged care sector. While the current proposals may provide some much needed assistance in the short term, there are longer term issues which remain to be addressed. The removal of the involvement of the ACAT teams in the assessment procedures where residents are remaining in the same facility but their care needs have increased from low to high will bring much needed certainty to both the residents and the aged care providers by allowing a smoother, quicker and more streamlined transition to a higher level of care.

This is only one change of many needed within the industry to provide an accountable system without imposing an overwhelming administrative and paperwork burden on aged care providers. And goodness knows there is already a very significant burden at the present time. There remains a need for increased clarity regarding the implementation of the proposed three-level resident classification scale and how this will be related to payments, including the funding of supplements for residents with special needs. In particular, there is a need to ensure that the level of these supplements reflects the costs of providing for the more complex care needs of these groups.

Removing the five-year cap on the payment of an accommodation charge for those residents deemed eligible for such a charge will contribute in a small way to injecting
much needed funds into residential aged care in this country, as will some of the other measures proposed in the budget package. However, they do not present a comprehensive long-term solution to the increasing demands that our aged care sector will face into the future. The underlying problems in aged care pricing will re-emerge down the track. The so-called COPO Index has not been overhauled despite falling behind aged care costs for some years now, meaning that the same problem will loom again in 2007-08. A sustained approach to meeting the ongoing capital needs of the aged care sector, in our view, needs to be debated publicly, including discussion of future needs for means tested accommodation bonds.

A related issue is that the necessity to provide sufficient funds to ensure wage parity for staff in the aged care sector compared with their counterparts providing care in other arenas. Although the government has stated that budget measures are intended to provide staff with access to better wages, reports from the industry suggest that these funds will barely cover already negotiated wage increases and that there are no guarantees that additional funds will flow through to increase staff wages to a more equitable level. Provision of high-quality care for older Australians relies on the existence of an adequately skilled and remunerated work force to provide that care. Ensuring the existence of this work force must be a fundamental role for the government.

Finally, the vast majority of older Australians prefer to stay in their own homes for as long as possible and out of the more expensive residential aged care homes. There remains a need to examine the adequacy of existing funding for services aimed at assisting older Australians to remain in their homes and to live as independently as possible for as long as possible. The Democrats are supportive of this legislation but will continue to evaluate future measures put before us in order to evaluate their contribution to the development of a high-quality sustainable system of aged care for older Australians.

I will turn briefly to the second reading amendment. I have only just seen it, so I have not had a chance to look at it in detail. In my view, this government has taken aged care a very long way down the track of a good aged care system, one that we can be proud of. I cannot say as much for the ALP. Throughout the debates in aged care it seems that a great effort has been made by Labor to scaremonger about aged care and to under-rate the efforts of this government in improving aged care standards—and I think that they have been considerable.

I am not sure that the reintroduction of the great debate about accommodation bonds is useful to us at this point in time. In fact, we think that bonds are quite sensible. We cannot see any good rational argument for having accommodation bonds at the low-care end in hostels and not applying them at the high-care level when there is the same need for capital works funding. However, this is a debate that we have had which Labor has used to great political point-scoring effect, and it seems to me to be a very unhelpful approach. I do not hear from Labor any great promises that there will be money flowing into aged care to take the place of what is really needed, and that is fair bonds that take account of the circumstances of people who go into high-level nursing care or aged care. We believe that could be managed in a way that does not marginalise some and that is fair on those who pay it. However, that debate is not likely to occur because of the overreaction the ALP has injected into this debate. Aged care has to be paid for somehow and the operational grants that go to aged care at the present time are not adequate. Even the injection of funding, whilst
welcome, will be a stopgap, because at the end of the day we do not have a system which is annexed sufficiently to deliver ongoing funding for aged care.

I do not hear anything from the ALP about how they will fix the indexation. All we hear are suggestions that the government is likely to reintroduce bonds. Senator Forshaw, I am pretty much disinclined to support this second reading amendment, but we will have another look at it. The first point I would agree with: the government has ignored the pleas of the aged care industry. I would not say that there is neglect of residential aged care, but certainly there is neglect of funding. That has been common with both your previous government and this one. I do not think there is any doubt that the sector is underfunded. Most of us who go into nursing homes pretty much decide that we do not want to be there because there are not enough resources for them. There are plenty of people with special needs in aged care—and that worries me a great deal—who do not get the services that they need in aged care. I would like to see much more emphasis placed on this very question. Whether they are young people with disabilities or chronic or degenerating illness, there are people who should not be in these places, and the reason they are there—

Senator Patterson interjecting—

Senator ALLISON—Senator Patterson says it is the states’ responsibility. We can go back and forth, bouncing this ball of responsibility between the states and the Commonwealth, forever until we solve this problem, but it is not on the horizon right now. We could have this debate about who should be funding it. I do not think people care: they just want the problem solved. The sooner Commonwealth and state governments do that in collaboration and cooperatively, the better off so many people who are stuck in places that are totally unsuitable for them will be.

We will think a bit more about this second reading amendment, Senator Forshaw. There might be bits of it that we can support. I would certainly not want to be part of another scare campaign about bonds, as I said. We do not have a philosophical objection to them in any case. You can tell people that. I actually do not think that there is the fear out there that you would like to imagine there is about such arrangements, since we already have it for low-care residents. We will consider those words.

I think the opportunity for looking at the problems in aged care will come with the terms of reference which are currently circulating for a Senate inquiry into aged care. I welcome that because I think we need an intelligent debate, not one which is based on trying to frighten old people who imagine that they are going to either be tipped out of their house or have to pay amounts of money that they cannot afford. We do not want that sort of debate. We do not want to reopen the terrible time for aged care that we had a year or so ago, with kerosene baths and other very frightening concepts for older people. We do need to acknowledge the government’s developments in aged care. We certainly have a better aged care system now than we did in 1996 when this government came to power. But there is more to be done, and that is really what we should be focusing on.

Senator NETTLE (New South Wales) (3.39 p.m.)—In rising to speak on the Aged Care Amendment Bill 2004, one thing that everyone acknowledges is that the aged care sector is in a state of crisis. There is justifiable community concern that the current deregulated aged care system, inadequate staffing levels and declining standards of care, together with a growing number of people being forced to wait longer for nursing bed
homes, are indicative of the government’s lack of focus in this important area. The aged care policies of the present government have failed to provide older people with the quality care that they deserve. The Greens acknowledge that this bill goes some way towards implementing the recommendations of the Hogan review, which the government has refused to act on until now, and we acknowledge the funding boost to the aged care sector in the budget. But this government, typically, seems to have ignored the role and the need of aged care workers.

The national shortage of nurses and other carers has affected the supply of workers in the aged care sector, particularly in rural and regional areas. A recent health sector union staff survey of aged care workers found that more than half the respondents did work that they were not paid to do. Over two-thirds said there were not enough staff in their workplace and, as a result of this, almost one in four felt that there was a danger to their safety in going to work. This is an unacceptable situation for staff and an unacceptable situation for residents. I would have thought that it was commonsense to acknowledge that the aged care crisis could be addressed in part by improving the situation of aged carers and other workers in the industry. But the federal government does not seem to understand that just giving money to aged care providers will not fix this basic industry problem.

Why aren’t there enough aged care workers to cope with the demand? It is not just about lack of funding; it is about wage disparity, working conditions and a lack of training for aged care workers. Currently aged care workers receive $170 per week less—that is 25 per cent less—than their public hospital colleagues. Why doesn’t this government value the work of nurses who care for the aged? It does not take a genius to work out that the aged care sector will have trouble attracting workers as a result. Closing the wage gap should be a matter of priority for the government if it is serious about improving aged care.

Four years ago the federal government allocated $211 million to improve the pay of aged care workers. But since that money was allocated the wages gap between aged care nurses and nurses in the public hospital system has actually doubled. This policy was an obvious failure. In the latest budget the federal government has again allocated $877 million, which, again, it says will improve the wages in the aged care sector. This money will go to providers. Again, the government has not imposed any conditions on the providers that receive this money to commit them to closing the wage gap between workers in the aged care sector and the rest of the nursing community.

Surely the federal government would learn from its expensive mistake on this issue. If it were really serious about improving the lot of the aged care sector, it would say to the providers, ‘You can get this extra funding but you must commit to closing the wage gap between your aged care nurses and their public hospital colleagues.’ This is a position that is supported by the Australian Nursing Federation, the body that represents all nurses in this sector, and by the Australian Greens. If the extra funding does not have a condition put on it, it is simply a gift to aged care providers and does not address the shortage of workers in this area. The government needs to show a real commitment on this issue.

The Hogan review also recommended 2,700 extra registered nurses places be provided at Australian universities. The government has failed to meet this number by committing to provide just 1,600 extra places over the next four years. The government needs to act on the Hogan recommendation...
urgently. But this action alone will not ensure that extra nurses will enter the aged care sector. Currently postgraduate scholarships are available to aged care nursing students who are working in rural areas. The Greens support the call by the Australian Nursing Federation to extend these scholarships to those in urban areas so that nursing staff with postgraduate qualifications can enter and work in the aged care sector in all geographic locations.

Carers enter the aged care sector because they believe they can make a difference in the lives of one of the most vulnerable groups in our community. They are committed to and passionate about their jobs. But, even if wages are improved and extra aged care nurses are trained, workers will not stay in the sector if their working conditions are unbearable. I have heard the horror stories about the conditions that some workers face: facilities where one registered nurse is responsible for 90 residents and where there are sometimes no staff awake at night to care for residents. The federal government’s own report released in April of this year is damning. It shows that less than 20 per cent of staff have enough time to properly care for residents and that one in four carers is expected to leave the sector in the next three years.

It is outrageous that there are not minimum staffing levels existing in this sector. The Greens call on the government to legislate, to implement and to enforce minimum staffing standards as a matter of priority. Staff are overworked and underpaid. This risks the health and safety of residents and carers, and it damages the quality of care that some of the most vulnerable members of our community have access to.

Debate interrupted.
historic opportunities to enhance Anzac Day and Australia Day as the profound statements of Australian nationalism that they deserve.

The solution is not overly challenging, but it requires an act of will. Why not combine the Queen’s Birthday and Australia Day Honours, and ensure bravery awards and medals of a military nature be announced on Anzac Day.

Both moves would enhance the significance of the two days. In the case of Anzac Day I am mystified as to why the purpose of this day is not broadened in its nature and construction to formally honour and commemorate those deserving a bravery award, the brave and meritorious service of our Defence Force personnel and veterans with the appropriate accolades. My own grandfather was a World War One veteran and like so many other Australians I am immensely proud.

It is perhaps timely to now give some of the history regarding the honours lists and Queen’s birthday.

Prior to the introduction of the current system of Australian honours and awards in 1975, imperial honours and awards were conferred by the Sovereign, twice a year—on New Year’s Day and on the Sovereign’s official birthday, the Queen’s Birthday. When the imperial awards were finally abandoned in 1975 (imperial knighthoods and other major awards had been abolished in 1972 except for the lesser awards such as the MBE and OBE), the New Year’s Day’s list was changed to Australia Day but the Queen’s birthday list remained. As the Australian Newspaper on June 11, 2001 commented, the reasons for the retention of the Queen’s birthday list were to placate the monarchists and because it fell close to the middle of the year and gave us all a mid-year long weekend.

In 1995 the report of the Review of Australian Honours and Awards, A Matter of Honour, was published. The Review recommended that all announcements of awards in the Order of Australia be made once a year on ‘Australia’s National Day’ (Recommendation 62). Advice from the Department of Prime Minister and Cabinet of the day was that the Government did not agree to this recommendation because there are too many awards to make it feasible to announce them all on the one day.

The Queen’s official birthday is celebrated as a public holiday in June in every State and Territory except Western Australia which has its public holiday in October.

Australian honours and Awards consist of two divisions—general and military—each comprising four levels of awards, Companion, Officer, Member, or recipient of the Medal of the Order of Australia.

Awards in the general Division are made in the name of the Sovereign by the Governor-General, on the recommendation of a council. Awards in the Military Division are recommended to the Governor General by the Minister of Defence.

Australian Bravery awards comprising the Cross of Valour, the Star of Courage, the Bravery medal, the Commendation for Bravery Conduct, and the Group Citation for Bravery Awards are made in the name of the Sovereign by the Governor General on the recommendation of the Australian Decorations Advisory Committee.

A range of medals was announced in 1986 for gallantry in the Defence Forces.

The 1995 Report of the Review of Australian Honours and Awards noted that there were two sets of announcements each year, one on Australia Day in January and another set on the Queen’s Birthday in June.

“It would seem appropriate that these should be moved from the Queen’s Birthday to Anzac Day. Public Service and civilian awards could be announced on Australia Day and military and bravery awards on Anzac day.” The report recommended.

The report believed that the Defence-related awards announced on Anzac day would enhance the day and give it a greater and dynamic significance, with greater focus on Anzac Day.

As well it recommended that a new Volunteers Service Medal be announced and presented either on Australia Day or another suitable day.

I know that the honouring of our volunteers is currently incorporated into Australia Day honours, but if the argument is also that Australia Day would be cluttered with a giant honours list if it assumed the role as a day for the Queen’s birthday honours as well, then this could be alle-
viated with a separate day celebrating our volunteers. This could be on International Volunteer Day December 5, or during National Volunteers Week, the second week of May. There may be others. I put it forward purely as an idea for consideration and debate.

The Queen’s long weekend birthday holiday was born out of Empire Day which originated as a celebration of the British Empire. It was held on 24 May, Queen Victoria’s birthday, and was first observed in Australia in 1905. Empire Day was primarily directed at school children. In public schools a morning of short addresses, recitations and patriotic songs was followed by a half-day holiday to mark the celebration of Australia’s strong ties to the British Empire. In 1958 the name was changed to British Commonwealth Day. In 1966 the name was changed again to Commonwealth Day and the date moved to 11 June, the Queen’s official birthday. Commonwealth Day is not a public holiday.

For these reasons I recommend the scrapping of the Queen’s Birthday Holiday, because even the British do not observe it. As I have said previously the Queen’s birthday is actually on April 21.

I do not want to be prescriptive on when we should observe this holiday. I am certainly not using this argument to deny Australians a holiday. There are possibilities. For instance, our volunteers should be honoured with a national medal and I think Australians would see it as entirely appropriate if we commemorated the tireless and often anonymous work of our secret army of volunteers by observing a public holiday and using that day to honour our volunteers with an honours list. These heroes of our society save governments up to $40 billion a year because of their free service. Don’t under-estimate their work, or their contribution to our great Australian character.

Finally I know some monarchists will view this speech as just another beat of the republican drum. I would prefer to see it as support for enhancing our young but clearly strong and unique Australian character, our traditions and our history. Australia’s history encompasses our European heritage, our Australian indigenous culture and the brilliant tapestry and mix of migrants that have called Australia home.

I don’t believe that by edifying and building on our strengths we are dishonouring our past. On the contrary, we are drawing on our past to help shape our future.

I hope these suggestions will be considered and debated in the spirit in which they are intended. They will be forwarded to the Prime Minister and others for consideration, and I warmly welcome any feedback.

**Sport: Drug Testing**

*Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.45 p.m.)—* I wish to raise in the Senate today a matter of very serious concern to me as a former Commonwealth minister for sport. Since the election of the Howard government in 1996 I have been watching with mounting concern as Australia has dropped from a position of leading the world in the fight against drugs in sport to the very back of the pack. The Labor government dealt strongly and constructively with the revelations of drug use in Australian sport exposed by the Black inquiry undertaken by a committee of this Senate. We led the way in establishing a powerful and independent testing agency, the Australian Sports Drug Agency, and in setting up mandatory competition and out-of-competition testing, education and enforcement programs. But I believe our standing on antidoping in sport is under serious threat.

I have been informed of major concerns held by some in the sports community about the ramifications of one serious and recent drugs in sport case. Very briefly, the case involves an 18-year-old cyclist, Mr Mark French, who was an Australian Institute of Sport scholarship holder at the AIS cycling facility at Del Monte in Adelaide throughout 2003. I understand that French denies any use of drugs prior to entering the AIS program, and I have got no reason to doubt that.
On entering the program, French was required to agree to both the AIS and Cycling Australia doping policies, and he undertook a drug education program and received appropriate literature.

I am informed that, sometime in the first half of 2003, French was introduced to substance injection, initially of vitamins only, by another and more senior member of the AIS squad. I understand he has admitted to requesting that the other athlete inject him on a number of occasions with legal substances, vitamins B and C and Carnitine. I also understand that in June 2003 French was introduced by the same athlete to injections of a product known as Testicomp, which contains a banned glucocorticosteroid.

The AIS squad then attended a training camp in Germany where the same athlete suggested that French purchase this product from a pharmacy and that he split the drugs purchased with a third athlete. On return to Australia, French’s room 121 at Del Monte became the central point of choice for AIS cyclists to self-inject with a variety of substances. I understand French has said that he only injected himself with vitamins or Testicomp, but it is now known that at least four other cyclists used his room for the injection of both legal and prohibited substances, the latter including Testicomp and equine growth hormone. I understand that room 121 was used for the storage and use of banned drugs, for the storage of drug-taking paraphernalia such as syringes, needles and armbands, and for the disposal of used equipment in homemade sharps containers and that these activities involved up to six athletes locked in French’s room on several nights a week for a period of months. These covert activities apparently went undetected until French was vacating his room in December last year, and cleaners found his sharps bucket in his room, with used needles and syringes and used vials containing traces of banned substances, including equine growth hormone.

Initially at least, AIS staff handled this in what seems to me to be the proper way—securing the evidence, interviewing French, and documenting and witnessing his admissions. However, I am more concerned about the Australian Sports Commission’s processes from then on, the AIS being one of the programs of the Sports Commission. The ASC’s initial investigation of this serious matter was undertaken by the ASC human relations manager and was then passed on to a lawyer from Mallesons. This investigation did not report until February 2004 and, as far as I can tell, this report has not been forwarded to anyone outside the Sports Commission. The minister should inform us of what role he has had in the investigation, including whether he received a copy of this report, and what role the ASC Chairman, Mr Bartels, has played, given his prominence in the sport of cycling.

On 9 February 2004, both the Sports Commission and Cycling Australia served infraction notices on French, alleging four breaches of the ASC antidoping policy and eight breaches of Cycling Australia’s policy. These allegations of breaches were heard by the Court of Arbitration for Sport in Sydney on 3, 4 and 7 June, and the court found against French in two of the four ASC policy breaches and in five of the eight Cycling Australia policy breaches. French was suspended from the sport of cycling for two years, the minimum sanction for these offences, and fined $1,000.

My concerns about this case relate to the manifestly inadequate actions of the AIS, the Sports Commission and, ultimately, the Minister for the Arts and Sport, Senator Kemp. Firstly, there is clearly a completely inappropriate culture in place at Del Monte, where a young cyclist is introduced to and encour-
aged to take up injection practices, including those of banned substances, by a senior member of the AIS cycling team. The AIS’s duty of care for this young cyclist and his sporting career has been completely neglected. Secondly, the supervision and management of the Del Monte facility was clearly inadequate. Room 121 was used as an injecting room, or indeed as a shooting gallery, by up to six cyclists locking themselves in several nights a week, undetected for months on end. Why didn’t the coaches and other staff twig that something untoward was taking place? Cycling is, after all, one of the highest profile sports to be at risk from performance-enhancing drugs.

Thirdly, the investigation process is clearly and fatally deficient. Why was a human resources manager tasked with the initial investigation, and why has the entire investigation and prosecution of the case against French been kept in the hands of the Sports Commission? There has been no truly independent investigation, no independent scrutiny, no reporting outside the ASC and, because of these deficiencies, no credibility. And when I asked Minister Kemp in question time yesterday whether he was satisfied with the Sports Commission’s handling of this case, he failed to answer, and he has failed to impose proper process and accountability on investigations within the Sports Commission’s own programs.

Fourthly, despite the considerable evidence, including the admissions of French, there have been no charges brought against any of the five other athletes alleged to have been involved in the purchase, possession or trafficking of drugs; the storage of drugs and implements; the administration of prohibited substances; or the disposal of used instruments in room 121 at Del Monte. I understand that, of the five other cyclists understood to be involved, at least two are considered potential Olympic gold medallists. Fifthly, the Sports Commission has been less than transparent throughout. There have been no public statements about other AIS squad members’ involvement, no availability of the investigation reports and no statements condemning the use of drugs—or, indeed, the drug-taking culture that was clearly evident at the AIS facility at Del Monte.

Despite Minister Kemp’s bleating about his desire to set up independent tribunal processes at least as far back as 2002, he has done absolutely nothing to establish a credible, independent or powerful investigation and determination process. The French case has shown the need for an investigation to be undertaken independent of the ASC, particularly where Australian Institute of Sport athletes are involved. I have discussed my deep concerns with this case with the President of the Australian Olympic Committee, Mr John Coates, over the past 24 hours. I believe this to be an entirely proper course of action because of the possible implications for the cycling squad in the Australian team for the Athens Olympic Games this year. I understand that the Australian Olympic Committee has today written to Cycling Australia urgently seeking assurances regarding the drug-free status of shadow members of the Australian Olympic squad, together with the investigation of, and possibly prosecution action against, any athlete involved.

In conclusion, I remain deeply concerned by many aspects of this case. I am concerned about the manifest failures of this minister and the Sports Commission to properly encourage drug-free sport or to establish truly independent and credible investigation procedures for allegations of drug use in Australian sport. Minister Kemp must act on this matter immediately. I will not be commenting further on this case until Minister Kemp answers the questions I have set out today and yesterday in the parliament. I seek leave

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CHAMBER
to table the partial arbitral award of the Court of Arbitration for Sport in the relevant case.

Senator Kemp—Is that a public document, Senator Faulkner?

Senator Faulkner—It has certainly been made available to me.

Senator Kemp—It has been made available to you, but this case is still subject to appeal. Frankly, I do not have legal advice here. I noticed that at the end of Senator Faulkner’s comments he said that we must tread with caution in this matter. My advice is that this matter is still subject to appeal, and I would not want this Senate or any actions by Senator Faulkner or myself to prejudice this matter.

The President—Senator Kemp, are you granting leave or not?

Senator Kemp—I am just asking a question. I think it is important that this matter be resolved in a sensible fashion. I have made my point, and I rather hope that Senator Faulkner can respond in a constructive manner.

An incident having occurred in the gallery—

The President—Order! I ask you to remove yourself from the gallery.

Senator Kemp—I seek leave to make a short statement on this matter.

The President—Senator, I presume you wish to comment after Senator Bartlett finishes his contribution.

Senator Kemp—Yes, but there has been a specific question about the tabling of the document.

The President—Minister, I suggest that, between now and when you make your contribution after Senator Bartlett, you check out the document.

Iraq: Treatment of Prisoners

Multiculturalism

Senator Bartlett (Queensland—Leader of the Australian Democrats) (3.57 p.m.)—I would like to speak firstly on the controversy and the legitimate public concern about this government’s total failure to follow up its basic responsibilities in ensuring that the coalition forces, which our nation is a part of, follow international law and basic standards. There has been a lot of debate, a lot of statements, a lot of accusations and a lot of dodging and weaving by the government. It is a simple fact; a straightforward issue. It is not really very complicated. The simple matter is that we as a nation, as everybody knows, were part of an invading force in Iraq. That automatically makes us an occupying power and we cannot then cut and run from our responsibilities in being part of an occupying power and ignore our responsibilities to ensure that the forces that we are a part of follow international law. It is a simple thing.

The simple fact is that the Minister for Defence, the Prime Minister and the Minister for Foreign Affairs have all looked the other way and have all failed to follow up repeated indications and reports of problems, with a mindset that it is not their problem. It is their problem; it is their responsibility. That is the simple fact. There is a clear legal responsibility and, more importantly, a moral responsibility on the part of the government—the relevant ministers and the Prime Minister—to follow up reports of mistreatment of prisoners held by coalition forces. That did not happen, and that should be condemned. The Democrats, along with others in this place, will ensure a debate on this matter next week.

The simple fact is that the Minister for Defence has failed in his task. The Democrats believe he should be censured, and to-
together with other parties next week we will ensure that there is a debate to that effect. I live in hope that the minister will finally give a proper explanation. Perhaps the even more extraordinary possibility will happen and he will acknowledge that a mistake has been made and make a commitment to ensure that it does not happen again. Either way, there has been a clear failure on a range of fronts, and it is the Democrats’ view that a censure of the minister is appropriate. I expect that a debate around that issue will happen next week.

In the adjournment debate two nights ago I made some comments in relation to the situation facing the Islamic community in Australia. I made what I thought was a very general speech simply reporting the views of some in the Muslim community. As a consequence—as, unfortunately, often happens—Senator McGauran, who is here again tonight, heard one or two sentences and then immediately extrapolated and assumed that he knew what else I was going to say. He stood up and gave a speech responding to what he thought I was going to say rather than what I did say. He completely misrepresented what I said. He totally missed the point and obviously had not listened at all. Given that he is here again, I hope he actually listens this time to the point that I am making. It is simply reporting a fact about the perception amongst many in the Islamic community that they are being specifically targeted as a consequence of laws passed by this place. We have just passed another piece of antiterrorism legislation today. I am simply reporting that fact.

The day after Senator McGauran got up and said, ‘This is all nonsense; everything’s fine,’ there was a big piece in the *Australian* detailing Islamic women in particular and their experiences and perceptions. You cannot just deny them and say, ‘No, their perceptions are not real or valid.’ They are real, and you need to acknowledge and address them. That is the simple point that I am making not just to the government but to all parties in this place. I include the Democrats in that, even though we did not support the passage of the antiterrorism legislation or the ASIO legislation previously. It is incumbent on all of us here as community leaders to make clear statements not just to the Islamic community but also to the Australian community as a whole that the Muslim communities around Australia are valued and valuable parts of our society. They have an important contribution to make. If Senator McGauran does not want to believe my statement, he can look at the Human Rights and Equal Opportunity Commission’s report on the Isma project. Coincidentally, it has just appeared this week as well. The Isma project is about listening. I will briefly quote from its executive summary:

The majority of participants—and over 1,400 Muslim and Arab Australians participated in these consultations—reported experiencing prejudice because of their race or religion.

These experiences ranged from offensive remarks about race or religion to physical violence.

Participants felt that those most at risk were readily identifiable as Arab or Muslim because of their dress, physical appearance or name. For example, Muslim women who wear traditional Islamic dress—such as the hijab headscarf or veil—were especially afraid of being abused or attacked.

That is a reality. It is not good enough just to say, ‘We are not aiming these laws at the Islamic community.’ Yesterday—the day after I made my comments on this subject in the adjournment debate—I met with seven representatives from a range of peak Muslim
organisations in the ACT, New South Wales and Victoria. They specifically stated their perception. You cannot say that perceptions are wrong. You can say that their understanding or belief about why it is happening may be wrong, but you need to convince them of that. I believe that part of that is making clear statements to the entire Australian community saying that the antiterrorism laws are not targeted at Muslims, that the Muslim communities are valuable parts of our community and that an essential part of why multiculturalism and ethnic diversity is so important to Australia is the value the rest of us get as a community from the contribution of each person and each group of people of different ethnic and religious background and cultural heritage.

The plain statement that these groups were making was that they believed that the law has been applied in such a way as to be systematically discriminatory against Muslims. For example, one organisation said that all of the 17 organisations proscribed since the act was passed are linked with Muslims, whereas in the United States only 22 of the 37 proscribed organisations are linked with Muslims. The other example given is that many in the Muslim community believe that they are seen and portrayed as the enemy or as people to be viewed with suspicion. We need to counter those perceptions and views. They are saying that the legislation and the actions that have happened since then have led to a feeling of paranoia and fear permeating their communities. Of course they are not asserting that every Muslim is a law-abiding citizen. As in any community there are some who are involved in criminal activities. But the legislation should not be seen to be targeted specifically at them. That is very important.

I believe that the key thing to be emphasised, even for those who believe such laws are necessary—and I am one of those who are still not convinced that we need the extra powers; I think we still need to do more to make sure that the existing powers are being used appropriately—is that, whatever powers we give to agencies like ASIO, there is still an issue of how they are implemented. We all want all powers to be exercised appropriately and fairly, but in a way that is as effective as possible against potential terrorism. They are going to be far more effective if people such as those in Muslim communities are of a mindset where they feel that they can cooperate with groups like ASIO and the Federal Police rather than fear them. The very small number of people who do need to be focused on are far more likely to provide information to highlight areas where there may be concerns if there are good links with the Muslim community and they feel connected with the rest of society rather than fearful of it. So, from the point of view of getting maximum productivity out of the existing laws and ensuring that groups like ASIO can work effectively, we need to counter this fear, apprehension and suspicion. Unless we do that not only are we as a whole community missing out on the value that Muslims can bring to Australia but also the laws will be less effective. (Time expired)

**Aviation: Air Safety**

**Senator MACKAY** (Tasmania) (4.07 p.m.)—I seek leave to incorporate my adjournment speech in *Hansard*.

Leave granted.

*The speech read as follows—*

I have spoken on this matter previously and sadly its urgency remains. I again call on Mr Anderson to scrap the NAS system and failing that the Class E airspace nationally.

Airservices Australia announced after a Senate Estimates inquiry.

in late May that Class E airspace would be removed in November around some Capital Cities. Apparently Airservices Australia isn’t aware that
Hobart is a capital city and will continue to be endangered by Class E airspace lunacy along with the rest of Regional Australia. (A)

This is madness. Regional Airports in this country are endangered by Class E airspace on a daily basis to a greater extent than the Capital Cities lucky enough to have the radar coverage required to make this system almost safe.

I was astounded at the lack of coverage the Australian Transport Safety Bureau Discussion Paper received; the limited coverage it received however was negative. (B) You may ask: What Mr Anderson’s response to the discussion paper? And I quote...

“Normally, when new systems are introduced an increase in incidents occurs.” (C)

I think we should ask ourselves did Australians really need to risk an increase in airspace incidents. If you assume the risk is worthwhile; shouldn’t the atmosphere of change be open and accessible? Again I quote

“It is unfortunate that some individuals have chosen to question the integrity of these vital elements of our aviation industry.” (C)

The last time I checked, Mr Anderson was calling for individuals to participate (D). This statement confirms what the industry has been saying; Mr Anderson and Airservices Australia have very selective hearing.

But Australians have come to expect that from the Howard government and his Ministers. So what has happened in our skies since the introduction of Class E airspace?

During the 140 days covered by the ATSB discussion paper, 31 NAS related incidents occurred. (E reference for all following points bar the first one)

Let’s take a quick look at the 31 incidents.

- 29 of the 31 were Category 5. (F)

My understanding of the category system is that these incidents will be filed for statistical purposes because of funding availability. This to my mind does not represent a body which is being encouraged and supported to really analyse and investigate the implementation of NAS.

- 10 of these incidents were related to Transponder Functionality.

This is the pilot’s ability to communicate with Air Traffic Control. This is also the Air Traffic Control ability to see the aircraft. Several of these incidents involving Light Aircraft Pilots simply forgetting to turn the transponder on.

These incidents occurred consistently throughout the 140 day period, not just the first few days of operation.

- Bizarrely, 5 incidents involved Parachutes and Gliders, and the images that bring to mind are gruesome to say the least.
- 31 out of 31 incidents occurred in Class E airspace, 31.

Class E airspace is clearly a danger to the flying public and must be removed immediately.

Alarmingly the majority of the 31 NAS related incidents occurred in the very regions where Mr Anderson will maintain Class E airspace indefinitely. Mr Anderson has ignored the bush again, and this time he also leaves regional Australia in danger.

Coincidently Civil Air has compiled Violation of controlled airspace data and includes Class E airspace. This data compares the same 140 day period as the ATSB discussion paper, and includes the previous year as a benchmark. Last year Civil Air data states that 293 violations of controlled airspace occurred, quite a few. A few too many for me to justify risking an increase as the NAS system was introduce. During the 140 day period we are discussing 397 violations of controlled airspace occurred. An increase of over 100 violations of controlled airspace. How many studies and data tables will it take for Mr Anderson to understand each incident or violation involves people; real people, mortal people. (G)

I should say I don’t expect Australians to march on the streets for the removal of Class E airspace, I don’t expect it because Australians expect the government to at least look after the nation’s basic need for a safe transport system, infrastructure and support. Australians do see that the Howard government can’t be trusted with the family dog.

So what has Mr Anderson done...

Mr Anderson sends Portable Radars out if there is a near miss; a case in point is the Launceston Air-
port. The Portable Radar which was supposed to be commissioned by the end of April was officially commissioned just last Friday. The six month delay is dangerous to say the least, the operational parameters of the Launceston Radar beggars belief. (H)

The radar has been located at tarmac level, not as previously investigated by the ASA itself on Mt Barrow which would have provided excellent coverage for the Hobart International Airport instead of the minimal provided. Adding just one more layer to the system; the images produced by the Launceston Radar aren’t available in Tasmania. They are viewed in Melbourne only. (I)

But Senator Barnett doesn’t acknowledge any of these failing, indeed if you read Senator Barnett’s press release endearingly titles “New Radar Watches Over Tasmania”. Senator Barnett obviously expects the radar to tuck us into bed to hear this fable. Let me quote from Senator Barnett’s release “Tasmania was ultimately chosen as the radar site above other states because of the type and volume of commercial aircraft and general aviation traffic and as the site best suited for the radar system”. This is sheer fantasy.

The radar is not located in its prime location if it was the entire state of Tasmania would be covered; properly. The radar came to Launceston because of a highly published near miss, no more no less.

Senator Barnett goes on to say “You cannot and should not be able to twist the arm of an agency such as AirServices Australia, but I would like to think they listened to our case”. Is this a case of AirServices Australia being given permission to listen, I doubt the same permission has been given in relation to Class E airspace. (J)

So the Launceston Radar has cost $1.2 million dollars, it will provide minimal coverage of the Hobart International Airport which is located near several light aircraft operators — a prime Class E airspace safety risks. Australians must see this as a half-hearted attempt to fix this system.

The radar itself was in storage at Tullamarine Regional Airport dragged out for special occasion like CHOGM or the Olympics.

So Mr Anderson and AirServices Australia allowed two airports to be without the benefits of the Portable Radar for six months, and has left Tullamarine without a replacement announced as yet.

Mr Anderson’s other response to the discussion paper is to consider four separate new options ranging from inventing brand new airspace to shallower steps around Capital Cities and again industry sources are saying Airservices Australia has selective hearing. (K)

The Launceston Radar fiasco characterises Mr Anderson’s manoeuvres as the Transport Minister. He placates; he reacts; I speculate like many others that the NAS system came about because of Mr Anderson’s personal fear of loss; the loss of his seat.

The loss of his seat seems to have outweighed the loss of air safety NAS represents to Australian Airspace. But then you can’t vote in-flight!

Indeed it would have been a great personal loss for Mr Anderson if Dick Smith’s funded candidate had taken Mr Anderson’s seat in the last election. But then of course Mr Smith’s candidate didn’t finish the race and shortly after low and behold the NAS/Dick Smith system became a prerequisite, a must have, Australia couldn’t survive without it!

What Australia had was efficient aviation sectors that lead the globe, developing leading edge technologies and processes. Which have been replaced by pen, paper and the Air Traffic Controllers whose professionalism is the only reason I continue to fly.

Prior to Class E airspace Commercial Pilots weren’t likely to be confronted by parachute gliders at approximately 5000 feet. Prior to the near miss in Launceston, calls for extended radar coverage in this regional area fell on deaf ears, were stoned walled and in the rest of Regional Australia still go unheard.

NAS requires extensive radar coverage to be a safe system. Yet Mr Anderson chooses to risk people’s life before he will improve radar coverage and then only on a case by case basis. Mr Anderson’s sole selection criterion for extending radar coverage seems to be a highly published near miss incident involving a decent crowd.

Mr Anderson is so busy keeping the people he deems important happy that I believe he is negli-
gent. Negligent in keeping Australians skies safe. I fully understand the gravity of this claim but stand by it. Every day that Mr Anderson maintains Class E Airspace or considers the four re-packaged version of Class E Airspace he endangers Australian Airspace Safety.

Remove Class E Airspace immediately, Mr Anderson, it is cumbersome, it is a clear danger to Australia. Fix it Mr Anderson.

The PRESIDENT—Minister, are you going to grant leave for the tabling of the partial arbitral award of the Court of Arbitration for Sport?

Senator Kemp—I plan to make a speech on the adjournment on this matter, so perhaps I can deal with that during my remarks.

Sport: Drug Testing

Senator KEMP (Victoria—Minister for the Arts and Sport) (4.07 p.m.)—Senator Faulkner came into this chamber and made some allegations about a range of sportsmen in the cycling program at the Australian Institute of Sport. It was interesting that Senator Faulkner made that statement, not the shadow minister for sport, Senator Lundy. I am not sure why Senator Lundy was not given the call to make the statement rather than Senator Faulkner. I guess that is an internal matter of Labor Party processes. Senator Faulkner was of course the Minister for Sport and Territories and, during that time, had the capacity to do all the things he now proposes to do but did not do when minister. Senator Faulkner made some comments about his role as minister for sport. I make no comment on that. I know more about his role as the Minister for Environment, Sport and Territories during the final years of the Keating government, which was indeed undistinguished. But drugs in sport is a very serious matter. When this government came into office, it took a range of actions to highlight this issue and to attempt to bring about significant change, which it did. Indeed, I think we can claim credit for setting up the processes which have led to the world antidoping code in sport.

In contrast to Senator Faulkner, the ball was not dropped. Senator Faulkner’s role was not distinguished for setting up the proposals that he attacked me over, and today we see Senator Faulkner coming into this chamber and making allegations against a range of athletes. This government takes antidoping in sport very seriously indeed. I indicated to Senator Faulkner that, in the light of his statements yesterday in the parliament, I would examine the statements he made and be prepared to come back into this chamber to make a statement. Senator Faulkner raised a number of other issues today in his adjournment speech. I will look very closely at the matters he has raised and I hope early next week to make a statement on this matter. Making allegations of the type which Senator Faulkner has made is a very serious thing indeed. He says athletes who may be going to Athens may be involved. Senator Faulkner has taken a very significant step. We are now building the Australian momentum towards Athens and it is important that our athletes are drug free—no-one would argue that—but these matters have to be handled in an appropriate fashion and that applies to everybody involved.

What should I be doing? Yesterday I indicated that I would look into Senator Faulkner’s concerns in relation to the handling of the breach of antidoping policies by a member of the AIS cycling team. I point out to the Senate that, contrary to Senator Faulkner’s assertion, the case is not finalised. The Court of Arbitration for Sport has handed down its ruling on the matter, but I understand we are still in the period where this ruling can be subject to appeal by the athlete. We have to be careful that we do not prejudice the rights of anyone involved.
The Australian government have a zero tolerance policy for drugs in sport. We will not tolerate it in any shape or form. After every case the ASC will look closely to see whether any changes need to be made to procedures. I will look very closely at the matters Senator Faulkner has raised and I will be making a statement to the parliament next week.

It is important to stress that the ASC and Cycling Australia appointed an independent investigator, as I am advised. The subsequent hearing was conducted by an independent tribunal—the Court of Arbitration for Sport. These were independent processes. I do not know whether Senator Faulkner is making an allegation that there was unscrupulous behaviour by the ASC, but the advice I have is clear that independent processes were established.

In relation to the behaviour of other athletes, Senator Faulkner has raised a number of other issues. Before I make a statement on that matter, I want to clearly look at the points Senator Faulkner has raised to make sure that the advice I have deals with those particular matters. The government’s policy is to always keep ahead of the field in our antidoping performance. I believe that that is the case in the country. As I have mentioned, the government is looking at other processes to see how we can further improve procedures in this particular area. I have said before that we are very keen to make sure that our processes cannot be subject to unwarranted attack and that unwarranted allegations cannot be made against people. On the other hand, we are equally determined that appropriate action is taken against people who cheat or take drugs. We are particularly pleased with the leading role Australia has played in the promotion and adoption of the world antidoping code in sport.

To conclude, I have been asked whether I would approve the tabling of a particular document which refers to the partial arbitral award of the Court of Arbitration for Sport. Given the advice that I have received—and this is only preliminary advice—I am not convinced that this is a public document. If this document were tabled, it may have implications for any appeal that may be launched. I am prepared to reconsider this matter on Monday if I receive proper advice on this matter but, at this stage—and I do not want to prevent the public obtaining full knowledge of this—in the light of the preliminary comments I have received, I would prefer to receive more formal advice before I agree to the tabling of the partial arbitral award of the Court of Arbitration for Sport. I would expect to receive that advice early on Monday, and I would then of course be in a position to agree, or alternatively not agree, to the tabling of this document. I am particularly conscious that, as I said, my advice is that the case can still be subject to appeal by the athlete. Whether he will appeal or not, I do not know. I want to be careful about doing anything which may prejudice the rights of particular individuals.

Let me conclude by saying that doping in sport is abhorrent. It is abhorrent to this government. This government has taken a very strong lead in this area. Senator Faulkner attacked the process of the ASC, and I suspect the process of the ASC that he attacked may well have been similar to the process when Senator Faulkner was minister for sport. That can be determined. The fact is that I can give an assurance to the Senate that this government will continue to aggressively pursue policies to attack doping in sport. We will do whatever is necessary that can be done to continue to purge sport of drugs. That is a commitment I give as the Minister for the Arts and Sport. We know there are significant challenges in this area.
but we have got to be very careful about attacking people—(Time expired)

The PRESIDENT—For the record, leave is not granted for the tabling of the partial arbitral award of the Court of Arbitration for Sport.

Sport: Drug Testing

Senator LUNDY (Australian Capital Territory) (4.17 p.m.)—I would have sought leave to make a short statement but, given there are a few minutes left on this adjournment debate, I will speak in that capacity. This document is a public document. The Court of Arbitration for Sport says so, once the award has been made. The possibility of appeal is irrelevant to the status of this award, whether it is partial or otherwise. Serious allegations have been made today about drugs in sport at the Australian Institute of Sport’s Del Monte facility. Senator Kemp must now clarify what he knows about these allegations and what he intends to do to address them.

When I questioned Senator Kemp on this case during Senate estimates committee hearings two weeks ago, he failed to answer. In question time yesterday, Senator Kemp also failed to say whether he was satisfied with the Sports Commission’s handling of the case against cyclist Mark French. Today we have heard allegations that up to five other cyclists at the Australian Institute of Sport’s Adelaide facility used cyclist Mark French’s room as an injecting room for prohibited substances, including glucocorticosteroid and equine growth hormone. A completely independent inquiry must be established to examine these very serious allegations of drugs in Australian sport. The inquiry must be fully independent of the Australian Sports Commission, the Australian Institute of Sport, the national sporting organisation involved—Cycling Australia—and the government.

Senate adjourned at 4.19 p.m.