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

TAXATION LAWS AMENDMENT BILL (No. 7) 2003

Consideration of House of Representatives Message

Consideration resumed from 21 June, on motion by Senator Coonan:

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

Senator SHERRY (Tasmania) (12.32 p.m.)—I move opposition amendment (1) on sheet 4271:

At the end of the motion, add “and agrees to the following further amendment:

(1) Schedule 2, item 1, page 9 (after line 6), omit:

| 2.2.30 | The Constitution Education Fund | the gift must be made after 20 June 2003 |

Senator CHERRY (Queensland) (12.32 p.m.)—It is appropriate that I foreshadow that the Democrats will be moving amendment (2) on sheet 4278 in this committee stage. As Senator Murray indicated before we adjourned last night, the Democrats want to insist on the amendments which the Senate has made in respect of the schedule dealing with gift deductible recipients. He also indicated that we will be opposing the amendment moved by Senator Sherry in respect of the Constitution Education Fund. The amendment I am foreshadowing is to add nine councils of social service to the list of gift deductible entities.

The reason why we are doing this is that we need to make a point to the government over the course of the next couple of days that the government’s response in respect of the whole issue of definition of charities has been quite inadequate. One of the other bills on the list for debate today is the Extension of Charitable Purpose Bill 2004. This bill is all that is left of the government’s response to the charities definition inquiry, which reported in 2000. That inquiry, the chamber may recall, was formed as a result of discussions between the Treasurer and the Democrats about the need to properly define what a charity was and to ensure that the 400-year-old definition of ‘charity’ was brought up to date.

One of the areas that pretty much the entire charitable sector disagreed on was the appropriate definition of a charity for the purposes of political activity or lobbying. It is worth noting just how out of touch the government has become on this issue. Indeed, in terms of its original draft charities bill, which came out of part of its response to the charities definition inquiry, the government has thought to curtail the activities that a charity could engage in in lobbying, research and advocacy activities. It was part of what had been a consistent view by government over many years that it did not regard advocacy and research as a legitimate charitable purpose.

The particular approach the government adopted was in complete contrast to a more modern understanding of what was a charity for the purposes of tax law. In fact, it is worth noting that the charities definition inquiry, which was headed by Justice Shephard, made it quite clear when it said:

The Committee recommends that charities should be permitted to engage in advocacy on behalf of those they benefit. Conduct of this kind should not deny them charitable status even if it involves advocating for a change in law or policy. Submission from both charities and governments have demonstrated that charities are increasingly asked to represent to governments the interests of those they seek to benefit and to contribute to the de-
velopment and administration of government policies. The Committee considers that the definition of a charity should not prevent these developments as they represent an effective means of delivering outcomes for individuals, charities and governments.

That was its recommendation, and it is most unfortunate that the government chose not to follow that recommendation through. It is not just that but, in dropping its own charities bill, which was announced in the budget, now there will be no reform at all in this area and charities will be required to continue to rely on an inadequate and ad hoc approach by the Australian Taxation Office.

The Democrats are seeking to move to add to the list of gift deductible entities the most important advocates on behalf of the poor in this country, which is the Australian Council of Social Service and its constituent bodies. It is, in our view, absolutely disappointing that the government has for so long sought to resist the recognition of ACOSS and its constituent bodies as charities and as gift deductible entities. I think it is perfectly reasonable and totally consistent with the view taken by the charities definition inquiry that this parliament should recognise the fact that the work that the Australian Council of Social Service does, and its various constituent bodies, is of a charitable nature. It is work that is for the advocacy of the most poor and disadvantaged in our society. Our parliament should recognise that. It should recognise that those purposes are worth promoting. If the bulk of its expenditure ends up coming back in terms of lobbying on behalf of those people into this place, then that too is worth promoting, because I think we need to be reminded in this place, time and time again, of our responsibilities to ensure that policy is in line with advantaging the poorest and most disadvantaged in our society.

I should also point out that the government’s view on advocacy and research is increasingly out of line with what is coming out of the courts. It is worth noting, for example, the case in October 2002 in the Victorian Civil and Administrative Tribunal dealing with the tax status of the Australian Conservation Foundation, where Mr Gibson determined that the Australian Conservation Foundation was a charity for the purposes of Victorian taxation law. He made it clear that it is time for governments to come up to speed on these particular issues. He said:

It will I think be obvious that it cannot be said that a charity ceases to be a charity if its activities are predominantly said in some unspecified sense to be “political”. But if the central object of an organisation is to procure a change in the law, at least in a field that is not otherwise charitable, then this object does not fall within any of the four headings of charity that the law recognises and accordingly the organisation cannot be seen as charitable.

He made it quite clear that the evidence showed that because the purposes of the ACF were consistent with national legislation in terms of protecting the environment, obviously it was an organisation which was pursuing purposes which were charitable. I think that approach could certainly be said to apply to ACOSS.

The Democrats commend this amendment to the chamber because we think it is important that this chamber completes the work that the government has failed to carry through, which is to start bringing our definition of ‘charity’ up to date with what it needs to be in the 21st century. We are currently operating off a definition of ‘charity’ which is now some 400 years old. It is time to recognise that times have moved on, the courts have moved on and the whole nature of the work that charities are doing has moved on. Certainly it is time for the government to recognise that its long and consistent campaign to downgrade the importance of research and advocacy in promoting the needs
of the poor and disadvantaged in our society needs to end. We need to ensure that the Australian Council of Social Service and its very important work on behalf of the poor and disadvantaged is recognised and that Australians who make contributions towards its work are in themselves recognised through it having deductible gift recipient status.

Senator SHERRY (Tasmania) (12.39 p.m.)—I want to comment on the Democrat amendments that have been circulated on sheet 4278. Democrat amendment (1) lists the charitable tax status, DGR status, of the Australian Republican Movement and the Real Republic Ltd. There is an inconsistency in the approach of the Democrats here.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that opposition amendment (1) on sheet 4271 be agreed to.

Question negatived.

Senator CHERRY (Queensland) (12.40 p.m.)—I move Democrat amendment (2) on sheet 4278:

At the end of the motion, add “and agrees to the following further amendment:

(2) Schedule 2, item 2, page 9 (after line 8), at the end of the table, add:

| 4.2.27 | The Australian Council of Social Service Incorporated | the gift must be made after 30 June 2004 |
| 4.2.28 | The Council of Social Service of NSW | the gift must be made after 30 June 2004 |
| 4.2.29 | Victorian Council of Social Service | the gift must be made after 30 June 2004 |
| 4.2.30 | The Queensland Council of Social Service Incorporated | the gift must be made after 30 June 2004 |
| 4.2.31 | The Western Australian Council of Social Service Incorporated | the gift must be made after 30 June 2004 |

I note that I have chosen not to move amendment (1).

Senator SHERRY (Tasmania) (12.41 p.m.)—You pulled it without me being able to speak against it. I was going to highlight the inconsistency of trying to insert the Australian Republican Movement and the Real Republic Ltd.

Senator Cherry—It was inconsistent.

Senator SHERRY—There is an inconsistent approach, given that we were trying to remove—

The TEMPORARY CHAIRMAN—If you two senators wish to have a private conversation together, I recommend that you seek the leave of the house to do that. Otherwise, Senator Sherry, you should address your remarks to me.

Senator SHERRY—I just wanted to highlight the inconsistency. We are attempting to remove the Australian Constitution Education Fund, basically on the grounds that it is a political front for the monarchist movement.

Senator McGauran—it’s constitutional.

Senator SHERRY—The Australian Democrats would not agree to that, I point out, Senator McGauran. Then they were proposing to put in the Australian Republican Movement and the Real Republic Ltd. Turning to the Democrats’ second amendment,
the Australian Council of Social Service and its state bodies perform an important role as peak bodies for welfare groups in their respective jurisdictions. Whilst ACOSS is principally a lobby or research group, its primary objective is to highlight issues affecting the most vulnerable in our society—arguably a charitable purpose. If providing relief to the poor is considered charity then it is not too much of a stretch to say that arguing for that relief is also charitable.

The fact that the review into the definition of charities and other organisations recommended extensions to the definition of ‘charitable purposes’ to include organisations such as ACOSS and its state bodies adds weight to providing it with specific listing as a DGR in the tax law. We agree that the Australian Democrats have made the point on a number of occasions, in response to the minister’s claim, that we have some 400 years of tradition here and it is time to update the 400 years of English law in the Australian context. That 400 years of law, whilst it might have stood the test of time, was established before even Australia was established as a nation, so there is some updating required. Labor understand the government’s concerns that ACOSS may not meet the public fund requirements. Labor consider that this is an administrative issue which can be resolved without the need to oppose the Democrat amendment. Therefore we will support the Democrat amendment.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (12.43 p.m.)—ACOSS made an application for DGR status in a letter to me dated 19 May 2004. That application is proceeding in the normal way and is being given appropriate consideration, as you would expect with any serious application for DGR status. Given that the government is currently considering ACOSS’s application for specific listing—and I had in mind advising the organisation when a decision is made on the issue—my current view is that it is not appropriate to simply have it listed until it has satisfied the various parts of the application that every other DGR applicant must satisfy. The provisions for becoming a DGR deliberately constrain DGR status to a closely targeted subset of charitable and other not-for-profit organisations and, given the targeted nature of the gift provisions, the government’s general approach has been to list an organisation specifically only where it does make a direct contribution to the public interest. My colleagues who have made remarks about that may well be correct in that ACOSS does contribute to the public interest, but that is part of the general consideration of the organisation’s application.

In addition, as a matter of process and, may I say, good tax administration—something that is constantly urged upon the government—an organisation is generally specifically listed only after it has satisfied the Commissioner of Taxation that it meets certain integrity standards known as the ‘public fund requirements’, which is a process that is very important. It is not just administrative, with due respect; it is integral to ensuring that there is some integrity in the framework of how DGR applications are processed. I am certainly not aware that the commissioner has come to a view about ACOSS. I must say that I have an open mind about whether ACOSS should have DGR status. I am very mindful of the advice I receive, but sometimes I accept it and sometimes I do not, depending on other matters that may be brought to my attention, including submissions made by the organisation. They have made a sound one and quite a comprehensive one.

However, at this stage and for the reason that this very important process has not yet run its course—and when I say ‘process’ I am not talking about ticking boxes; I am
talking about the consideration of whether the public fund requirements are met—we are unable to support the Democrat amendment at this time. But we will obviously undertake to consider the matter taking into account the fact that there is Democrat support for this and in fact support from the opposition as well. Obviously I will seek to try to have this matter finalised as soon as possible, but given the way in which it has actually come into the debate I am unable to agree to it on behalf of the government at this time. I would certainly appreciate its not being pressed at this time for those reasons. We will be having a very full debate about the response to the charities inquiry in the course of consideration on that bill; so, although there were some matters raised by previous speakers in relation to charities more generally, I will save my comments until the debate on the later bill.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that Democrat amendment (2) on sheet 4278 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that the committee does not insist on its amendments disagreed to by the House.

Resolution negatived.

Resolution reported; report adopted.

SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF SUPERANNUATION FUNDS) BILL 2003

Second Reading

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

That this bill be now read a second time.

Senator SHERRY (Tasmania) (12.52 p.m.)—On behalf of the Australian Labor Party, I am speaking on the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003, so-called. That is my description: the so-called choice of superannuation fund bill. Once again, the Liberal government has introduced a piece of superannuation legislation that, if passed in its current form, is destined to make our superannuation system more difficult for consumers to understand and navigate—much more difficult than the Liberal government has already made the current superannuation system. This is a bad piece of legislation in its detail and construction and particularly in its safeguards to protect consumers that will, for many Australians, negatively affect their retirement savings. The government has carried out this deal with those habitual deal makers and publicity seekers, the Australian Democrats.

This piece of legislation continues a pattern followed by the Liberal government since its election of introducing legislation in a very confused and ad hoc manner in this area, the result of which has been to make the superannuation system even more complicated and more expensive to consumers. You would need a finance degree to understand the Australian superannuation system. This legislation, at least for many Australians, will require them to make so-called choices without the advantage of having a finance degree to carry out what are very important decisions. The principle and concept of choice sounds great, it seems fine when the choices are clearly set out and when they are understood, but this legislation fails because it is unsafe choice. It is deregulation without the necessary consumer safeguards, and choice without the necessary safeguards does not serve the interests of either consumers or the superannuation industry.

Firstly, I acknowledge that for many fund members choice already exists. The so-called choice legislation that we are considering will apply only to employees under federal
industrial law and not to those under state industrial law. So when the government talks about choice it is a choice that is being allowed only for federal industrial law employees, and even here it is restricted. The government is allowing the restriction of industrial agreements and workplace agreements. We know that most people have so-called choice when they retire. When they get to retirement they are able to take their lump sum and to pick a provider if they choose to invest that money in an income stream product.

What we also know is that, within a current superannuation fund, at least 80 per cent of fund members are able to pick an investment choice within that fund. When this general description of choice is used there is some confusion. A considerable majority of Australians can choose an investment within the superannuation fund that they are in at the present time. They can pick a high-growth or high-risk fund, overseas shares, Australian shares, bonds or cash. They have the ability to pick the investment. Most of them do not do it, but they have the ability to do so. But we are talking about the requirement that a substantial proportion of Australians—nine million people—will have to pick a superannuation fund to be a member of.

Senator McGauran—That is better than forcing them into one.

Senator SHERRY—We will get to that in a moment, Senator McGauran. We are talking about the failure to safeguard consumers, about what the Labor Party believe are shortcomings in protecting consumers, particularly from fee rip-offs that occur and we argue will occur more widely, and about the evidence of what happened in the United Kingdom when this approach was tried. A so-called free market, an unregulated market, places huge demands on consumers. They need to have high levels of financial literacy to be able to make an informed choice. Of course, the fact that superannuation is compulsory in the first place is an interesting illustration of market failure. If the market were perfect, then 100 per cent of Australians would have superannuation. The fact is they do not; they never did. At best, the coverage was 40 per cent. We have had to make it compulsory for them to pick up superannuation—a clear market failure—so that some 88 per cent of Australian workers are contributors to superannuation funds. The remaining 12 per cent are under the cut-off point.

One has only to look at those consumers who invested in Commercial Nominees. That was a superannuation fund. Where consumers chose that fund as their preferred fund—because some people do have so-called choice—this was the biggest case of theft and fraud in a superannuation fund in the last 10 years. While they may be the minority, there are, nevertheless, many funds that have very significant exit fees of up to thousands of dollars. If the government were consistent in its ideological position in wanting so-called choice, why does it permit exit fees? They are a barrier to exiting. Most people will not exit a superannuation fund if they have to pay thousands of dollars in penalty exit fees, even if there is a negative return. They will not do it because the penalties are so high. The government will not take up one of the fundamental protections, which is to ban exit fees. They should not be permitted. On the other hand, there are many who do not exercise the right to choose a fund because they do not have the necessary financial literacy to navigate the complexity of the superannuation system or, as I have said, they are trapped by excessive exit fees.

The Liberal legislation that we are considering is unsafe because it is so complex and it does nothing to reduce the bureaucracy and
the problems people have in trying to navigate the Australian superannuation system. What will happen is that the millions of Australians who are required to choose a fund will be given a product disclosure statement. They are given the information: it is a 60- to 80-page document. Within that 60- to 80-page document that millions of Australians will now need to read in order to understand how to choose a fund, the fees will be buried somewhere. So Australians will get a 60- to 80-page PDS and, in order to make an informed choice, they will need to understand it.

Labor argue that there are many Australians who, in the absence of having a finance degree, will find it difficult to understand the PDS document. They will also find it difficult to identify fees, because we do not believe the fee disclosure pages that will be in this 60- to 80-page document will be adequate. And what will be the behavioural response?

Senator Ian Campbell—You say, ‘Force them into a fund they don’t understand and leave them there.’ That is really clever, that is!

Senator SHERRY—Let us take up that argument, Senator Campbell. You are still allowing employers to force employees into a fund under AWAs. You are not allowing total choice. If you were consistent in your ideological position, you would not allow employers the right under an Australian workplace agreement to say, ‘You can’t have choice.’ You allow an employer a veto within your own choice bill. You are not consistent.

Let us deal with the problems that will occur when millions of Australians cannot understand a 60- to 80-page product disclosure document and identify all the fees and charges that are in there. What will they do? Many of them will do nothing and be in a default fund. That is fine—there is provision there for a default fund—but many of them will think, ‘I had better get some advice on this; I’ll go off to a financial adviser.’ This is where we have significant problems with our current system. What the government is proposing will increase the problems that will occur. All the international evidence suggests it will cause significant problems.

The government are saying that people reading these PDSs and switching from one superannuation fund to another, as they choose, is going to put ‘downward pressure on prices’. Notice the wording—‘downward pressure on prices on fees and charges’. If the government were fair dinkum they would come in here and guarantee that fees and charges will go down. Why won’t the government guarantee that fees and charges will go down as a result of the market competition they argue will flower as millions of Australians choose a superannuation fund? Because they know that in the United Kingdom when so-called choice was introduced by the Thatcher Conservative government it was an utter disaster. Like Australia, millions of consumers had to choose a superannuation fund and they found it very difficult to understand the information. Certainly one point that Senator Campbell makes is correct: our disclosure documentation—albeit we think inadequate—will be greater in the Australian jurisdiction than it was in the UK system. But there will still be a significant number of Australians who will find it hard to understand the PDS documents—60 to 80 pages—and they will need to go to an adviser.

What happens when you go to an adviser in the Australian system? You are charged an additional fee over and above that which you pay at the moment. Labor’s contention is that many Australians will pay an additional fee for the advice that they will need to understand the 60- to 80-page document. And that additional fee in the Australian system is usually in the form of a commission pay-
Labor has significant concerns with commission based payments and advice. Not only does it add to costs, not reduce costs—because there is an extra cost to the system that is tacked on when you pay for the advice—but commissions are a fundamental conflict of interest. Superannuation advisers are paid out of the commission. Many Australians do not know that. It will be disclosed certainly, there is no argument about that, but disclosed somewhat inadequately.

What will be the behavioural pattern of the adviser? If the adviser is getting a commission of one per cent on a particular superannuation product and only half a per cent on another product, what are they going to recommend to the consumer? They are going to recommend the product they get the highest commission on. We know they do that at the moment to some extent. I do not suggest that all advisers behave in that way—they do not—but it is a fundamental conflict of interest for commissions to exist in this way in the superannuation system.

That is exactly what happened in the United Kingdom. Whether or not people got full disclosure documents and whether they understood the system, they were advised by commission-driven selling. They found it difficult to understand the superannuation system in the UK, as many do in Australia. They went to an adviser and the adviser said, ‘Come into this fund, this is a good deal for you,’ set it out in writing and the consumer believed them. Of course, the adviser was getting a commission payment—an add-on cost and a fundamental conflict of interest. This is not safe.

In Australia we have a compulsory superannuation system. There are not many like it in the world. The assets of superannuation moneys are certainly considerable, they are for retirement and they are long term. There are not many compulsory financial products.

It is not compulsory to have a bank account. There are not many products as complex as superannuation. It is not easy to return a superannuation product five or six years later when you suddenly discover you may have been stung on the fees and charges and commissions. You cannot return the product. You have lost your money; you have been stung. It is a unique financial product: it is for retirement. Knowing the failings of the current system and looking at the evidence overseas, Labor argue that we have to ensure very tough safeguards to have a safe choice regime.

Looking at the comments by Senator Cherry, he said, paraphrasing him, ‘Look, it doesn’t matter; consumers will never understand the disclosure documents.’ If Senator Cherry believes that it begs the question: why did they agree at all to this piece of legislation? One of the problems with fee disclosure in the government model is that it does not show the impact of fees over five, 10, 20 or 30 years. If you showed that, you would see—and this is essential for any so-called competitive market—that your fees would add up to $20,000, $30,000, $40,000 over the long-term life of a superannuation product. Labor argues that it is essential for consumers to see that. I think a lot of consumers would say: ‘I’m going to be paying $40,000, $50,000 or $60,000 in fees over the next 20 or 30 years. I am going to have a really hard look around to make sure that the long-term impact of the fee that I am paying is as low as I can get it.’

I notice the Democrats’ Senator Murray says that this cannot be done, it is too hard and that to project forward the impact of fees is just too difficult and confuses people. It is one of the critical failings of the disclosure regime. I do not know whether Senator Murray is listening, but it can be done and it can be done very simply. IFSA, the investment funds association, have argued it can-
not be done. In the United Kingdom, where they have just introduced universal projections over the long term, IFSA's counterpart body has helped develop the compulsory projection of fee model. Yet they argue it cannot be done here. Senator Murray is just plain wrong, and he should have looked around a little harder, particularly at the United Kingdom, with respect to long-term projections of the impact of fees. It can be done simply. It can be done safely.

I have made some comments about the lack of financial literacy levels and that you do need a finance degree to understand superannuation. The government's own chair appointed to their financial literacy task force, Mr Clitheroe, in reference to this super choice legislation and the regulations, made the point that a substantial proportion of Australians cannot swim between the flags on the beach of superannuation. They cannot even find the beach. This is the environment in which the government are proposing to deregulate superannuation. It needs to be done safely. We also know from the ANZ financial literacy results that, on average, even though the population has a reasonable mathematical skill, applying those skills to the comprehension of financial statements presents some challenges and that the understanding of basic investment fundamentals is very poor. Yet here today in this bill the Liberals and the Democrats are saying: 'Go and make these decisions. We know that financial literacy levels are low, but you are going to have to make these decisions.' Hence my argument that many people will do nothing or they will seek the services of an adviser and pay extra in fees and charges. They will pay more, not less. Sure, you can attempt to educate consumers. But, seriously, between now and 1 July next year when this legislation commences are we going to comprehensively make nine million adult Australians in superannuation funds financially literate so that they can understand the 60- to 80-page documents? I suggest that we have got a very big job ahead of us giving everyone in Australia a financial planning degree between now and 1 July next year. It just will not happen.

I have mentioned the exit fees. The Labor Party in a specific amendment will be proposing to ban outright exit fees. They are barriers that should not exist. We believe that commissions should not be permitted in respect of the compulsory nine per cent superannuation guarantee. We think there is a very strong argument they should not be permitted for compulsory superannuation. If the argument from the government is that fees and charges will come down, let us have comprehensive reporting of all the data on fees and charges and commissions so that we can actually see whether the fees and charges come down for every Australian who has got superannuation. I do not believe that claim, but that is what the government is holding up—that all the fees and charges will come down. The financial planners are saying: 'We will reduce all our fees and charges. Trust us.' IFSA have made a commitment on behalf of their constituent organisations that, with competition: 'All our fees and charges will come down.' The banks have also said it—a rather incredible claim. Let us have every fund in this country report the level of fees, charges and commissions for reporting. With respect to the requirement of reporting of fees, I move my second reading amendment:

At the end of the motion add “but the Senate is of the opinion that a reporting system should be established by the regulator, the Australian Prudential Regulation Authority (APRA), requiring:

(a) that all superannuation funds report to APRA:

(i) all fees, charges and expenses charged in relation to each
individual account paid on superannuation guarantee contributions,

(ii) all commissions charged in relation to each individual account paid on superannuation guarantee contributions,

(iii) all fees, charges and expenses charged in relation to each individual account paid on non-superannuation guarantee contributions, and

(iv) all commissions charged in relation to each individual account paid on all non-superannuation guarantee contributions;

(b) that APRA report on a quarterly basis on the APRA website:

(i) the total level of superannuation guarantee contributions,

(ii) the total level of non-superannuation guarantee contributions, and

(iii) the average level of fees and charges per $500 of superannuation guarantee contributions for each individual provider; and

(c) that APRA establish a register by provider name, of all superannuation products managed by that provider with a record of all fees, charges, expenses and commissions charged in relation to each product.”

(Time expired)

Senator CHERRY (Queensland) (1.12 p.m.)—The Democrats will be supporting the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003 to establish superannuation choice of funds. It has been a very long journey. I should acknowledge the presence of Senator Kemp in the chamber today. From my previous life as an adviser to Senator Lyn Allison, I know Senator Kemp and Senator Allison had innumerable meetings to try to get this legislation forward. Before I go into the details of the bill I will recap some of that history because I think it is very significant. This legislation first came into the parliament in, I think, 1997 and at that stage the Democrats took a position of saying the choice model would need to be extensively amended for it to be acceptable to us. It was reintroduced into parliament in 1999, at which stage there were extensive discussions between Senator Kemp and Senator Allison. Those discussions were incorporated into the bill which was introduced into the parliament in 2002. It is worth pointing out some of the agreements which were made at that stage. However, since then, there has been a further Senate inquiry. Senator Coonan brought forward amendments which were incorporated into the bill as a result of discussions with employers last year, and there have been further amendments moved by the government as a result of discussions with the Democrats over the last couple of weeks.

Senator Kemp—That is not quite the full history.

Senator CHERRY—It is a very long history and it goes back much further, Senator Kemp—I accept that—but I thought going back eight years was far enough. Over the course of those very long and detailed discussions a whole range of concerns which the Democrats have had with the original choice of funds model have been largely allayed. I think a lot of the concerns which Senator Sherry spoke about, which we have shared at various times over the course of the last eight years, have been largely put to bed. I think at this stage, rather than saying this is an unsafe piece of legislation, we can say with a reasonable level of confidence that we have made it as safe as it can be to trust Australians with their own savings. That is really what it comes down to: at what point do you trust Australians with their own savings?
and you ensure that their employers or their unions are appropriately regulated not to be able to improperly influence those decisions. You trust Australians to make their own decisions when you ensure that the regulatory scheme is as solid as you can make it. You make sure that the employee has complete control over what happens to their funds, rather than being influenced in any way by improper or irresponsible advertising.

I note that Senator Sherry, in his contribution, referred to the experience of the UK. It would be foolish of Australia not to actually learn from the experience of the UK. One of the interesting things about the UK experience which will not be replicated here is the fact that their pensions and superannuation industry has largely evolved from the life insurance industry. One of the key incentives in that particular program for encouraging the various life agents to encourage people to shift around was that they continually got new commissions for people shifting from fund to fund. One of the key things with which they were encouraging people to shift from fund to fund was in fact long-term projections about what their investments would be in those funds. It is rather ironic, given the criticisms we have heard from Senator Sherry and from others in respect of the fee disclosure regime last week, that one of the concerns which was constantly raised was this issue of projections.

What we are trying to ensure here is that we pick up a scheme which actually works for all workers—and workers are in different situations and circumstances. I believe that workers who are in an award based industry fund are probably better off staying in that fund in most cases, although not all. I certainly remember that, when I was researching superannuation in Queensland, the hairdressers award fund in my state had delivered negative returns for each of the previous 10 years that I had reported on. I think the hairdressers in Queensland would have been much better off out of that award fund. Similarly, for many years the transport workers fund in Queensland delivered negative returns, and those workers would have been better off out of that fund. That is replicated by the recent advice from Super Ratings Researcher last week which showed that, by and large, the not-for-profit funds are delivering better products than the for-profit funds. But they have got to be held accountable for that and they are held accountable by ensuring that, where they are not delivering, workers can move out. I think that is very important. That would have ensured that those hairdressers or transport workers in Queensland who were not getting a good deal out of their fund had a place to move to.

When you look at the way that our workforce has developed, you see that about 40 per cent of workers are under certified agreements—and, by and large, a certified agreement determines where their superannuation will go. Under the amendments which the Democrats negotiated with the government, a choice by a workplace through a certified agreement is recognised as a valid choice, and that is recognised by legislation, so essentially a collective choice of fund by a workplace recognised by a certified agreement will in fact pick up those 40 per cent of workers who have already chosen what fund they want to go into through their certified agreement. About 20 per cent of workers in Australia are currently covered by a mixture of federal and state awards. Under this legislation, those employees under federal awards will now have the right to choose where their superannuation goes. If they fail to choose where their superannuation is to go, it will default to stay in the award fund. I emphasise that in 2000 the Democrats insisted on that as a key requirement. The government’s original ideological proposal to remove superannuation clauses from awards...
has been trenchantly opposed by the Democrats over the last eight years.

The third category of workers is the 40 per cent of workers who are award free. At the moment we do not hear much from the Labor Party about this particular group of workers because, being a union based party, the Labor Party constantly forgets about the 80 per cent of workers who are not in unions.

_Senator Wong interjecting—_

**Senator CHERRY**—You do! At the moment and at law the placement of the superannuation of the 40 per cent of workers who are award free is determined by the employer, and that is the actual key issue that we need to deal with. In this legislation we are giving those workers, for the first time, the right to choose their superannuation fund. I think that is a very positive development.

In terms of the other changes which actually try to ensure that this is a safe piece of legislation, as I indicated before, for award based workers the award will be the default fund. That is a very important concession that we won. It also ensures, in the amendments which the government is moving, that a default fund must have a mandated level of minimum insurance cover. This issue has arisen time and time again in the Senate committee hearings. We are trying to ensure that there is a reasonable level of insurance cover for workers, particularly in terms of default funds and particularly as people shift around funds. The Democrats strongly support that. Those amendments are being moved by the government and we thank the government for doing that.

It should also be noted that, in the model that we are developing here today, before employees make a choice, they will be given a standard choice form which will provide them with a clear explanation of what choice is about, what they should look for and where they get further information. It is vitally important in terms of this whole community education program that, as we go through this, we provide as many warnings as we can to consumers about how to avoid the pitfalls which have been problems in other states. The standard choice form, the establishment of a superannuation consumer information centre, the $40 million of education and the simple fee disclosure requirement are all tools which ensure that workers can make an informed choice that actually benefits their retirement savings. The Democrats recognise we have to provide as much protection and assistance to consumers as we possibly can in all of this, but at the end of the day it is still up to the consumer to actually follow that through. The standard choice form, which we insisted on, is a very important part of that education process.

In addition to that, under the amendments which we are moving today, there will be an absolute prohibition on employers and unions signing up workers to a particular fund. In our view, this is very important because we do not want to have a situation where employers or unions are accepting kickbacks for shifting workers into one fund or another. It is important that as much as possible the choice be left to the employee to make, not to their employer or, in very rare circumstances, their union. I should also note that, under the financial services regulations, anybody other than a registered financial planner giving advice to an employee on superannuation matters is already prohibited. I hope that will be reinforced to both unions and employers as a result of the education campaign. I think those amendments are particularly important.

The amendments will also deal with the issue of monitoring fees and charges raised by Senator Sherry. This is a very important issue and I think it is essential that, in the development of the choice model over the next five years, there is quite detailed report-
ing and monitoring of fees and charges against the ASIC template. We need to know whether the government’s claims that the market can control fees and charges are valid or whether the ALP’s claims that fees and charges will go through the roof are valid. The only way to test and validate those claims is to monitor the fees and charges themselves. The government has agreed to do that, and that was announced by the Assistant Treasurer, Senator Coonan, yesterday. Legislative amendments to achieve that will be introduced in a subsequent piece of legislation. It is not in this particular piece of legislation because there is the matter of sorting out which is the best regulator to do it, but I accept the government’s assurance that that legislation will be brought forward to ensure that that monitoring does in fact occur before 1 July next year. I think it is very important.

There are two other issues on which we sought agreement from the government, as a result of getting the choice bill up to this stage in the Senate. The first was that of the simple fee disclosure, which was resolved between Senator Murray and the Parliamentary Secretary to the Treasurer, Mr Ross Cameron, last week. That is something which, from going back through my notes, we first put to the government back in 1997. Getting that simple fee disclosure model up has been a very long time coming. How simple is simple is something which there has been a huge argument about and something which I think there will continue to be an argument about. The Democrats adopt the view that simple should be simple and that simple should be as simple as it simply can be. We know from all of the consumer comprehension testing that the more numbers you put on a piece of paper, the more riders you put on it and the more assumptions you put on it the less consumers will understand it, which is why we have gone for the simplest model to give people the information to compare.

I cannot see how adding onto a simple fee disclosure a five-year projection, a 10-year projection and a 30-year projection, plus a first-year projection and a second-year projection, fits within that definition of ‘simple’. I think it is an oxymoron to suggest that you can have four different scenarios for what ‘simple’ actually means. You lose the notion of ‘simple’ in doing that. That is why, at the end of the day, having looked at the various models and at all the information, the Democrats came to the view that it was best to show a first-year and a second-year cost of a superannuation fund, to give in bold a warning on the simple fee disclosure statement saying that consumers should be aware of the impact of fees over the longer term and to give the tools to ensure consumers can calculate that—referring back to the ASIC web site and to the fees calculators on other web sites as well. That would ensure that consumers would have the tools to follow those issues through. At the end of the day, you can lead a horse to water but you cannot make it drink. You can warn consumers, you can put in place as much disclosure as possible to tweak their interest, but ultimately a consumer has to follow through themselves. That is one thing that we know, at the end of the day, we are letting go a bit in this place.

Superannuation under the previous Labor government was a very paternalistic business. It was the unions and the government telling workers what was best for them—and by and large industry funds have delivered a good product for workers—but at the end of the day I think the sophistication of the Australian work force has moved on just a little bit, and we have to recognise that. The measures we are putting in place today are part of a logical evolution for the Australian work force in giving them a bit more choice about what happens to their superannuation,
a bit more control over what happens to their superannuation and, hopefully, a bit more interest in what happens to their superannuation. Trying to get more accountability for the delivery of funds back to members is what this is all about. That is an important development.

The other thing I note this will do is give employees the right to put their funds in ethical investment. Senator Sherry makes great play out of the fact that 80-odd per cent of funds are now providing investment choice. I looked at the investment choice offered by my fund, and there is usually a fairly simple and arcane choice between low risk, medium risk and high risk. There is not investment choice for me to not have my funds invested in a way which is not ethical. This model will give workers the chance to say: ‘I don’t like the approach of my superannuation fund at all. I want to put my money into an ethical fund.’ That is a particular benefit. I note the statement put out yesterday by George Pooley of Australian Ethical Investment. People with long memories would remember that he was involved with the old Insurance and Superannuation Commission. It is worth quoting the statement in the time I have available. Mr Pooley said:

Prior to the historic change announced today, though Australians were forced to save, they had no guarantee they would have any say as to how their superannuation monies would be invested. Those old arrangements could be summed up as follows—you must pool your savings with fellow workers who might have entirely different savings needs and ethical concerns. You must entrust your super savings to persons required by law to act in a manner satisfactory to the Australian Government. If they act in a manner contrary to your personal, financial or ethical interests, you could do nothing.

Until this announcement, though Australians were free to vote for the party of their choice at the ballot box, they had no similar right in regard to investment of their superannuation monies.

Australian Ethical Investment welcomes this change, which will enfranchise millions of Australians with respect to investment choice of fund. With the passage of this Bill, those Australians will be able to express their ethical concerns with their superannuation monies, as well as with their vote.

That statement from Australian Ethical Investment highlights the fact that, in moving to a choice of funds regime, we also say to superannuation funds right across the board that ethical investment is now out there as a significant market factor and a market determinant. I think that should be welcomed by those people who want to see the growth in that very vibrant part of the funds management industry.

In winding up, I note for the record that the amendments the government is bringing forward today also include for the first time the recognition in Australian superannuation law of interdependent relationships. This, again, has been a long-term Democrats campaign, going right back to Senator Sid Spindler in 1995, and I am very pleased to finally see it recognised at law. The interdependent relationships definitions—and I will speak to them in the committee stage—are drawn fairly broadly from New South Wales relationships law and recognition with respect to property. They will ensure that the legal problem of not providing choice to same-sex couples as to where their death benefits go is finally resolved. At the moment the law allows complete choice on death benefits—that is, tax-free choice on death benefits—for superannuation to pass to a person’s spouse or to their dependants, and the definition of spouse includes a de facto heterosexual spouse. The Democrats have argued for a long time that that is a piece of social engineering that is too narrow. It is outrageous that the tax office was determining who
could and could not get a person’s superannuation under the threat of a 15 to 30 per cent tax impost.

We have argued this case long and hard in this place—I should acknowledge the contribution of my colleague Senator Greig in that regard—and I am pleased that the government has finally accepted a proposal to ensure that interdependent relationships will be recognised. The term ‘interdependent relationships’ will not be one which many people are familiar with, but it is a term which has been recognised in migration law for many years in allowing recognition of same-sex couples.

As I have said, the wording that we have used is drawn from the New South Wales relationships in property law, so it is well recognised also in state law. It ensures that a de facto heterosexual or same-sex couple will be treated on the same basis for the purposes of superannuation and the taxation of superannuation death benefits. That is an enormous achievement in terms of not just human rights but also economic rights, something which I am personally very proud of and which we have worked very hard to get.

I should thank Senator Coonan for the work that she has done on this amendment to this point. I should note that this does not go far enough, as often reforms do not. You do negotiate; it is not full recognition on the same basis as a married spouse, but that is a matter that we will deal with when we deal with the Marriage Act later this week. I should also acknowledge the work of our various Democrat advisers—Mr Ley is sitting behind me—who have worked very hard to get the fee disclosure stuff to a point satisfactory to us and the people who have been advising us. I commend this bill to the Senate. It is a very significant advance for workers on a social and economic basis and it shows what can be done when the Senate holds its line and works constructively with the government of the day.

Senator WONG (South Australia) (1.32 p.m.)—If I had not noticed where Senator Cherry was sitting I might have thought he was actually speaking on the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003 as a government senator and as a member of the Liberal Party. It is interesting—I understand that the Democrats are concerned about the forthcoming election and their lack of electoral support and are desperately trying to find their political relevance in this place by acceding to a whole range of things where previously they have held the line—but really it is quite pathetic for Senator Cherry to come in here and engage in the same sort of union-bashing rhetoric that we hear from the other side of the chamber.
I am sure there are many people in this country, both unionists and non-unionists, who would think none too kindly of the attitude that Senator Cherry has taken. He criticised the ALP, again really sounding more like a government senator, saying we always forget non-unionists when it comes to superannuation. Senator Cherry, perhaps needs reminding who it was that first introduced compulsory superannuation into this country, allowing superannuation to be accessed by working people in this country for the very first time—a policy which enabled working Australians and their families to actually contribute to their retirement savings. Who was it that introduced that? It was a Labor government. It was the Labor Party which actually ensured that superannuation was not only the preserve of high-wealth and high-income earners—

Senator Kemp interjecting—

Senator WONG—Madam Acting Deputy President, is the minister going to shout at me for the entirety of my speech?

Senator Cherry interjecting—

Senator Kemp interjecting—

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Order!

Senator WONG—Senator Cherry says I am talking—and I cannot use the word because it was a swear word—but I remind him that, prior to Labor’s initiatives in the area of superannuation, superannuation was the preserve in this country of high-wealth individuals—primarily. It was a Labor government that first ensured that superannuation was available to working people and their families. So for the Democrats to come in here and assert that the Labor Party does not care about non-unionists, when it comes to this important area of superannuation, is frankly ridiculous.

Before I go on to the choice of fund issue, I point out that industry funds, which I think Senator Cherry referred to as union funds and which the government regularly refers to as union funds, are, by and large, run by equal numbers of employer and employee representatives. They are not dominated by one side of the industrial divide; they are run cooperatively. It is simply indicative of the government’s political agenda, which is now apparently also the Democrats’ political agenda, that they are referred to only as union funds.

I turn now to the bill before us and the agreement that the Democrats have now made with the government to pass this legislation. Choice can equal exploitation unless proper safeguards are in place. I think that is well understood in this chamber. It is why, previously, the choice legislation put forward by this government has been voted against by the majority of the chamber. What is needed to ensure that choice is not an equivalent to exploitation is a strong consumer protection regime and a regulatory framework that prevents or minimises exploitation. This legislation fails those tests.

Surely, in the area of superannuation, the primary public policy objectives we have are to ensure the maximisation of the retirement savings of Australians. Surely, that is the primary issue. Unfortunately, the government and the Democrats appear to have lost focus on that primary objective and what we see in the legislation before us is a triumph of ideology over reality. I think the question most Australians are entitled to ask is: why would the government put in place a regime that could lead to a lessening rather than a maximising of people’s retirement incomes? Why has the government proceeded down this path? Is it because they think this will really increase retirement savings in this country? Is it because they really think that
this will lead to maximisation of people’s savings and incomes on retirement?

No, the government’s agenda on this has always been clear: they have always wanted to pander to a certain end of the superannuation industry—to the retail fund end—and they have always wanted to reduce the membership of industry funds. It has been a political agenda from start to finish, not a policy agenda aimed at trying to increase and enhance the retirement savings of Australians.

I would like to deal with a number of furphies which appear to be both explicit and implicit in some of the contributions of Senator Cherry and also the government’s statements on these issues. Firstly, there seems to be an argument, particularly from the other side of the chamber, that this choice of funds is a good thing because it will lead to people getting better returns on their investment. As I understand it, the argument is that people will be able to invest in funds which provide better returns than the industry fund they are in.

There is almost no evidence that that is the case. In fact in the published data over the last four years comparing the returns of funds in different sectors of the industry there appears to be almost no advantage to be gained by going into a retail fund or master trust. Rather, what you do see is an incredible imbalance when it comes to fees and charges. For many of the funds that the government say people should go into there is no increased benefit in terms of increased return, but there is a negative in terms of higher fees and charges. The argument that this somehow improves people’s ability to maximise their savings, on the evidence we have today, is entirely unsupported. The reality is that most industry funds have had comparable or even better returns than many of the other funds in the market at substantially lower cost.

Secondly, the government’s position is that fees will go down. As I understand it, their position is that this regime will exert downward pressure on fees. This is simply not borne out by the evidence. In the unregulated sector, particularly the retail sector in this area, we already have higher fees and charges than we do in the industry fund sector. If we look at experiences overseas—and Senator Sherry mentioned the United Kingdom after the Thatcher reforms, where there was a deregulation of this sector—we see that this led to a massive increase in fees and charges. Of course the problem with fees and charges is not just people paying fees and charges this year; the problem is the effect that has long-term effect on their retirement savings. This is something that many Australians do not yet understand—that is, what a one per cent, two per cent or three per cent annual ongoing fee or commission will cost them in terms of their final payout when they retire.

Another area the government have failed to regulate, an area that ought to have been regulated if they were serious about a safe choice regime, is exit fees. These are fees charged when a member seeks to take their money out of one fund and put it into another. The superannuation Senate select committee report last year—or perhaps it was the year before—looked at the portability regulations. There was one submission to the committee which listed an example of excessive exit fees. These range from nine per cent to 93 per cent of the balance in the account. What is the public policy objective in allowing those sorts of exit fees to be retained? There is none. The public policy objective ought to be to ban such exit fees. If the government were really serious about choice and really serious about allowing people to move between funds then they
would regulate those fees which act as an effective barrier to portability—that is, exit fees. But the regime in the legislation that the government are putting forward contains no such regulation. The position of the Labor Party, as articulated by the shadow minister in his speech, is that we would ban such exit fees.

I now want to look more broadly at the whole issue of fees, charges and commissions. I hope those of us in this chamber know that an annual ongoing fee or a percentage based fee can have an extraordinary effect on the income that you receive at retirement. A one or two per cent annual fee can reduce your final retirement income by between 22 and 40 per cent. A five per cent annual fee can reduce it by a huge 60 per cent. One would have thought that, if we were serious about enhancing the savings of Australians and if we were serious about ensuring that they are not exploited by the financial sector, we would do something about regulating these fees to ensure that Australians are not potentially exposed to being ripped off to that sort of extent—a 60 per cent reduction in their final retirement income savings.

I turn now to the issue of financial literacy. Senator Cherry argues that we are going to educate consumers. The unfortunate reality—and we would all probably like it to be different—is that Australians are not particularly good at understanding a lot of information about financial decisions in this area. We have referred to the ANZ survey which found that 56 per cent of people with superannuation—that is, a majority—did not have a good understanding of the fees and charges associated with their investment. Also, 40 per cent of people who had invested in managed funds did not have a good understanding of the fees and charges associated with their investment. The Australian Consumers Association, which gave evidence to the Parliamentary Joint Committee on Corporations and Financial Services, made the following statement:

We know in Australia, from ASFA-commissioned Ageing Agendas research and from the ANZ financial literacy survey, that consumers struggle to understand fees and commissions on many investment and superannuation products. When ACA and ASIC conducted the financial planning survey, even our panel of experts found it difficult in many cases to try and unravel the fee and cost structures of the plans and investments they were presented with as part of their assessment process.

So the consumer body is telling us that even their experts who were assessing the appropriateness of some of the financial plans presented to them found it difficult to understand fees and charges. The available literature shows that the majority of Australians do not understand this. Yet somehow the Democrats and the government say, ‘We’ll spend a bit of money on literacy and then they’ll be able to understand it.’ This is tied in with the Democrats’ position that the fee disclosure model they have agreed with the government is sufficient. As Senator Cherry himself conceded, it does not look at long-term projections. It does not say to the mums and dads of Australia, ‘If you go into this fund—which has a one, two or three per cent annual fee on it over the rest of the life of your involvement with it—this is the effect on your payout.’ That is not information consumers will have before them. We already know—from some of the statistics I have spoken about and other surveys—that most of them will not understand that anyway, but we are allowing them to be ripped off by some unscrupulous sectors of the market.

Finally and in closing, I want to make some reference to the interdependency amendments that the Democrats have got up. I note that Senator Cherry spoke about this having been around in the immigration area.
It certainly has. Again, it is something that was introduced by a Labor government, so I am glad to see the Democrats are yet again building on some of Labor’s reforms. The issue of interdependency is an important one and this amendment is an advance but, just because you get one aspect of the bill extracted as your price for doing a deal which could potentially leave many more Australians out of pocket and in a worse financial position, does not mean you should support the legislation. In many ways I think it is too high a price to pay for a victory in one area to allow this piece of legislation to proceed.

Senator HOGG (Queensland) (1.45 p.m.)—I rise to speak on the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003 today because, like Senator Wong, I was a member of the former Senate Select Committee on Superannuation. This issue has been around for a substantial period of time. More importantly, the deal that has been done between the Democrats and the government today allows people who are typically called snake oil salesmen to get their fingers into the pie of superannuation, which they desired to do back in the eighties, when superannuation was not the flavour of the day with the government or the Democrats. At that time, of course, government members, when they were in opposition, bitterly opposed the introduction of superannuation for a broader group of people out there in the work force who for a long time had been denied any access to a reasonable expectation not of a comfortable retirement but of a retirement where they could live with any dignity at all.

Senator Wong covered the issue of literacy and I am going to come back to that because that really goes to the heart and the nub of the problem that many people will be facing out there in the community when they are faced with the issue of choice. But they will be under great pressure from those people who are euphemistically called snake oil salesmen to tumble into products which promise a lot but at the end of the day deliver nothing but despair to people in their retirement. That is not what superannuation is about. Superannuation is about giving people some sort of certainty and dignity in retirement. If the government were genuine about doing something for people—and we are talking about low-income people—then it would have cut the contribution tax rather than cut the superannuation guarantee surcharge to high-income earners in this country. That would have been a positive step for low-income earners. We are talking about the funds that are held in many superannuation funds and currently in many industry funds by low-income earners. It is their one chance to have some sort of dignity in retirement, and that should be protected at all costs.

In casting my mind back, it is interesting to note that some of the points that I have made on this issue have been made for a substantial period of time. Nothing that the Democrats or the government have done here in coming to an arrangement on this issue has changed the substance of the debate. The substance of the debate has not changed at all. If there is to be choice there has to be informed choice, and that has been conceded pretty much across the industry, from my recollection, in the inquiries that have taken place. I want to refer briefly to the Hansard of the Senate Select Committee on Superannuation hearing of Thursday, 19 February, held in Sydney. A witness before us, Mr Rankin, who at that stage was the Executive Director of the Institute of Actuaries, said:

... if choice is not properly exercised, there will be no net benefit to the individuals trying to accumulate savings for their retirement, and no ... benefit to the nation.

This is about a net benefit to the individual in their retirement and a net benefit to the nation. If there is poor choice operating then
there will be no net benefit to this nation or to individuals at all. He went on to say:

If choice is poorly exercised, individuals and the nation will both be the losers. There is plenty of evidence to suggest that, without the capacity to make informed choices—that is, without addressing this asymmetry of information problem—people are likely to make poor choices.

It is not that they will not make choices; they will make poor choices, and making poor choices will affect their hope and aspirations to retire with some reasonable dignity. He went on to say:

They will make choices which are either too conservative for their personal circumstances or too risky for their personal circumstances.

So if the government and the Democrats are serious they need to be serious about the problems that confront people in terms of choice. At the same hearing in Sydney—and it was a very useful hearing indeed—Mr Lockery of Towers Perrin gave evidence to the committee. It is interesting to note what he had to say. Talking about the so-called benefits of choice, he spoke about ‘greater competition leading to improved investment returns and lower administrative costs’. He said:

Indeed, some members of smaller funds may achieve these benefits. On the other hand, we submit that such economic benefits will not be achieved for the vast majority of employees in large employer based or industry funds. Instead, in aggregate such employees are likely to suffer a net economic loss as a result of greater individual choice of superannuation fund.

So, contrary to what the government and the Democrats are trying to do, the introduction of choice is not necessarily the panacea that it is being painted to be—not at all. There is no doubt that, where choice has been available to people, it has not necessarily been accessed very greatly at all—but I will not spend a great deal of time on that.

Superannuation is a retirement benefit and it is a benefit, as I said, that was hard fought for and won, particularly by the trade union movement back in the eighties, which, with the cooperation of the then Hawke government, saw the introduction of superannuation on a more universal basis. I well remember when superannuation was being introduced back in the eighties because at that time I was the secretary of a branch of a major trade union, the SDA, in Queensland. The fighting that went on to get an industry fund up on that occasion—and we ended up with four funds for people to select from in the state of Queensland—was absolutely incredible. People came out of the woodwork to get every dodgy fund that they could recognised by the industrial commission on that occasion. The commission, to their credit, excluded a large number of funds that sought recognition under the award system and left one major industry fund and, at that stage, four minor funds. The commission understood that at the end of the day the superannuation benefit was for the retirement of low-paid workers—it was for their benefit and no-one else’s benefit.

The argument that was not really waged in those days but that went to the essence of what the debate was about was that people wanted to get their hands on the huge amounts of money they knew would become available when superannuation became universal in the work force. That is what the people out there who had less than good intentions, as far as I am concerned, wanted. They eyed off the money and determined that there was a real pot of gold waiting for them to get their sticky fingers into. They were excluded. This now looms as their second opportunity to get a share of the pie that they missed out on such a long time ago.

As far as I am concerned there is an overriding moral obligation for those entrusted with the money of those people paying into
senior superannuation funds to try to maximise their return. That is not always possible. However, choice is not or should not be about lining the pockets of some individuals or corporate entities by the use of high management charges, management fees, exit fees and the like. When it comes to the choice model, I have real doubts that those people who are confronted with the necessity of making a choice will be able to make, or will be allowed to make, an informed choice or a real choice, particularly if there is some prodding and pushing because the employer might be getting an advantage out of them being in one fund or another. People say that those things do not happen, but in the real world they do.

Choice should be about making an informed choice. However, as my colleague Senator Wong alluded to, many people do not have the literacy skills to make such an informed choice. I recall that, when we were doing the inquiry into the choice of fund legislation back in 1998 and earlier, it came out that there was an ABS survey about aspects of literacy. It was on assessed skill levels in Australia in 1996. One could say that this might be a little bit out of date. It may well be, but it is not going to be so much out of date as to be totally useless in this debate. The survey ranked literacy on a basis of levels 1 to 5. There were 2.6 million people who were found to be at level 1 at that stage, which meant that they had very poor literacy skills. Forty-seven per cent of the population surveyed were at levels 1 and 2—that is, they had some or considerable difficulty using many of the printed materials encountered in daily life. That is the problem. These people do not have the skills necessary to make the informed choices. As Senator Wong alluded to, there are those who cannot even make a choice in the proper sense at all because they do not have the skills that are required or are necessary to deal with complex forms. These are people who are deemed to be quite literate people in the first instance.

In an article by Robyn Hartley titled ‘The social costs of inadequate literacy’, a report to an international literacy year symposium in 1989, the author talks about the social costs of the lack of literacy skills. In her article she says:

Even highly literate people have trouble understanding some documents and forms. Those with inadequate literacy skills have no chance of understanding them. Documents which are based on legislation often tend to be particularly obscure.

In the same article, she goes on to say:

However, much still remains to be done. Redesign of forms may well help the majority of people, but those who cannot read will still be unable to cope without assistance.

So we have a real challenge in the choice format that is being brought forward to us because it advocates substantial reading material that people will need to understand such that they supposedly can make a choice. But it is a fact of life that people do not have the skills, capacity and ability to understand the material in the first instance so that they can make an informed choice. Hence they run the risk of putting one of their greatest assets—their superannuation—at the mercy of those people who would like to plunder it for their own financial purposes. This is completely untenable as far as I am concerned and shows just what a shabby deal the Democrats and the government have entered into.

Senator Abetz—You don’t believe that, Senator Hogg.

Senator Hogg—I certain do, Senator Abetz, and I am glad you are here. I do not know whether literacy is one of your greatest skills, but for a large percentage of the Australian population you will find it is not a skill that they have. They have a great deal of difficulty coping with the forms and with the
paraphernalia that these companies are able to piece together and present, supposedly as something that is an unbiased and unprejudiced view of the world. Of course, that is the very least that many of these documents contain.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Iraq: Treatment of Prisoners

Senator COOK (2.00 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister and the Minister for Foreign Affairs. I refer the minister to Lieutenant Colonel Muggleton’s final situation report from Baghdad, dated 17 February 2004, when he informed his chain of command in the Defence organisation of his concerns regarding the United States’s treatment of Iraqi detainees at Abu Ghraib prison. Does the minister support the concerns raised by Lieutenant Colonel Muggleton and has the Australian government made any formal representations to the United States government about the abuse of prisoners in Iraq to underline those concerns? In particular, has the government impressed upon the US the need for the current investigations into abuses to be comprehensive and thorough? If so, can the minister explain what representations were made and when?

Senator HILL—My recollection of what Lieutenant Colonel Muggleton said did not relate to abuses of prisoners in Abu Ghraib. I will refresh my memory but I think that that is the case. In relation to abuses, it is true that they came to the attention of US authorities in January this year as a result of internal information, basically with a military police person bringing forward this information. Investigation was immediately commenced. Shortly thereafter, certain personnel were suspended, an investigation was completed—I should have said that, when they commenced this process, they announced it publicly—and prosecutions have followed. In other words, proper process has promptly taken place after the allegations were brought to the attention of the appropriate authorities. It is therefore the position of the Australian government that the US is handling this matter appropriately and, as I said yesterday, that it certainly does not need lectures from us on the matter.

Senator COOK—Mr President, I ask a supplementary question. I note the word the minister has carefully used that he will ‘refresh’ his memory. Will the minister also undertake to make inquiries of the Minister for Foreign Affairs to determine whether any representations have been made? Does the government propose to make representations to the US government on this matter? Will the minister at least initiate inquiries about the whereabouts and welfare of the 120 Iraqis Australian forces assisted in capturing, to ensure that they have been treated consistent with the Geneva conventions?

Senator HILL—I think it is about time the Australian Labor Party gave a bit of credit to the United States of America. The United States of America has taken on the greatest load in this task in helping the Iraqis establish their new country and to give them a chance of democracy, a chance of freedom and a chance of a better life, and it has suffered significantly as a result of taking on that responsibility. Over 800 of its military personnel have died and many, many hundreds more have been seriously injured. It is a significant sacrifice to help contribute to a more stable and secure world, and it is something that ought to be recognised by all of us with some appreciation. From a Labor Party that will simply come in here carping about what it sees as inadequate management of a prison system in the environment that existed in Iraq last year, where those prisons were subjected to continual attack, where there were too many prisoners, where there were
insufficient facilities, it is an absolute disgrace—(Time expired)

Ireland: Handover of Sovereignty

Senator JOHNSTON (2.04 p.m.)—My question is to the Minister for Defence, Senator Hill. Will the minister advise the Senate on the progress being made towards the handover of sovereignty to the Iraqis next week? How is the Australian Defence Force contributing to this milestone? Is the minister aware of any alternative approaches?

Senator HILL—I thank the honourable senator for a constructive question on this subject. Wednesday, 30 June will mark a significant milestone in the transition towards a fully representative elected Iraqi government. Iraq will regain its full sovereignty and the interim government will have full responsibility for Iraqi affairs. Already we have seen the restoration of essential services, a revitalisation of economic activity and the rebuilding of institutions. The Iraqis have welcomed our contribution. The newly appointed Minister of Human Rights, Dr Amin, recently thanked Australia for our role in removing one of the world’s most ruthless dictatorships, he said, since the Second World War. Obviously, security remains a key issue. The Iraqi Prime Minister, Dr Alawi, said this week that the international community can contribute to security by providing Iraq with training and equipment. This is where Australia and the Australian Defence Force are playing a crucial role. As the government has said many times, Australia remains committed to remaining in Iraq until the defence task is completed.

Contrast this with Labor. After months of confused rhetoric from the ALP, what did we get from Mr Latham on the 7.30 Report last night? We got more confused rhetoric. He was quite specific in saying that all ADF personnel in Iraq would be withdrawn. There were no qualifications to it. But Mr Rudd has been back-pedalling on that stance for the last few months, saying that Labor would leave a significant number of Australian troops to protect Australian diplomats. Mr Latham is still not bothered to get an operational briefing from the ADF on what our forces are doing in Iraq. Why won’t he take the time to learn about the great work that our troops are doing in Iraq? Mr Latham’s policy on the run will force the closure of the Australian Representative Office in Baghdad. Out will come our air traffic controllers who have processed almost 156,000 civil and military aircraft movements.

Labor will also bring home the Army and Navy training teams. Labor will also pull out our Hercules transport aircraft, which have flown more than 12 million pounds of cargo and 13,000 passengers into Baghdad. Under Labor, if our diplomats need a lift into Iraq, guess who they will ask for help? Of course, the Americans. Perhaps Mr Latham’s friends in Washington might help. Our troops in Iraq deserve our full support and thanks for their efforts. The public deserves a coherent and sensible policy approach from the Labor Party. Is it Mr Latham’s one out, all out policy, or is it Mr Rudd’s half in, half out policy?

After three years, we are still waiting for a single defence policy position or commitment from Senator Evans. For a moment I thought we were about to get one. I received a flyer from the Royal United Services Institute, promoting a speech by Senator Evans—tonight, I think. He says he will be discussing opposition defence policy. ‘Great,’ I thought, ‘We’re now going to hear about Labor alternatives.’ The only problem is that the speech will be given under the Chatham House rule. As the flyer states, neither the identity nor the affiliation of the speaker may be revealed. If this speech continues the nonsense put forward so far by Labor on important issues such as Iraq, I can understand
why Senator Evans does not want to be associated with it.

**Australian Federal Police: Investigation**

Senator ROBERT RAY (2.08 p.m.)—I direct my question to Senator Ellison, the Minister for Justice and Customs. Can the minister confirm that the Australian Federal Police has concluded its investigation into the leaking of a highly classified ONA report on the humanitarian impact of the war on Iraq to the *Herald Sun* columnist Andrew Bolt in June of last year? If so, can he inform the Senate of the results of that inquiry?

Senator ELLISON—I understand that that inquiry has been concluded. I will confirm that with the Australian Federal Police. I was asked on this matter—I think it was last week—about the aspect concerning the Minister for Foreign Affairs. I issued a statement saying that there had been absolutely no evidence connecting the foreign affairs minister and his office with that issue and that the inquiry had been concluded. If there is anything further I have to add to that, I will come back to the Senate.

Senator ROBERT RAY—Mr President, I ask a supplementary question. Would the minister like to make available, either to me or to the Senate, the statement that there is absolutely no evidence linking the foreign minister’s office with the leaking of this document? The *Sydney Morning Herald* of last Saturday quotes him differently. It says that police found that their inquiry constituted no direct admissible evidence, which is quite different from what you have told the Senate today.

Senator ELLISON—Senator Ray is trying to draw a very fine point here. The fact is that the inquiry has been concluded, and that has been determined. I have issued a statement on that matter and it is consistent with what I have said here today.

**Howard Government: Economic Policy**

Senator EGGLESTON (2.11 p.m.)—My question is to the Minister for Family and Community Services, Senator Patterson. Will the minister inform the Senate how Australian families are benefiting from the Howard government’s strong economic management? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Eggleston for his question. I have said a number of times in this chamber that economic management is not a fluke, it does not just happen and it is not an accident. When you are getting unemployment rates of 5.5 per cent, the lowest in 23 years; when you get interest rates below six per cent; when you get inflation below three per cent; and when you reduce a debt, that you have inherited from a Labor government that was profligate in its spending, of $96 billion by repaying $70 billion of it and saving almost $6 billion in interest, then you are running the economy in a way which is strong, and you can return a social dividend to families and carers in our community—families with children in particular—who are the backbone of our society.

The budget is about giving families choice and about giving families opportunity. The new family assistance measures which were announced in the last budget will provide an additional $19.2 billion over five years. It is the largest package of assistance ever by an Australian government to families. Around two million families with 3.5 million children will benefit. By the end of today, two million families will have received an average payment of $1,200, because most families have two children, into their bank accounts. An eligible family with four children will receive $2,400. This is a bonus which is tax free and will not be taken into account when assessing eligibility for family tax
benefit as income. So here we have a bonus to families, and it is a result of strong growth and good economic management by the Howard government. That is what has allowed us to deliver the extra financial support that families deserve.

Senator Eggleston asked me: are there any other alternative policies? Labor has repeatedly refused to guarantee that Australian families will be better off under Labor. Mr Latham had two opportunities on the 7.30 Report a couple of weeks ago to make a commitment that families would not be worse off under Labor, and he failed to guarantee that. He failed to say to Australian families that they would not be worse off. What is more, Mr McMullan, the finance spokesperson for the Labor Party, has said that they will not guarantee the $600 increase per child in the family tax benefit beyond next financial year. I do not believe there is an alternative policy. Mr Latham said we would see it after the budget. Labor spokespersons have said they will give us their tax and family policies after the budget. It is now well after the budget and Australian families are still waiting—Australian families who have now got in their bank accounts $600 per child as a bonus to families, as a social dividend.

In addition, we have carers who are on carers payments receiving $1,000 and those on carers allowances receiving $600. That is what you can do when you have a surplus. Labor were borrowing against the future—in the last year they were in government they borrowed $10 billion from future children and grandchildren. When you run the economy well, when you run the economy in surplus, you can afford to give a social dividend to families. They are receiving that by tonight—2.2 million families with 3.5 million children will benefit from the way in which we run this economy.

Australian Federal Police: Investigation

Senator FAULKNER (2.15 p.m.)—My question is directed to Senator Hill representing the Minister for Foreign Affairs. Is the minister aware of the same report that Senator Ray referred to in his earlier question in the Sydney Morning Herald on Saturday, 19 June about the leaking of the highly classified ONA report on the humanitarian impact of the war in Iraq to the Herald Sun columnist Andrew Bolt? Is it true, as alleged in that article, that it was Mr Downer’s office that requested a copy of that report only three days before Mr Bolt published his article on it? Is it also true that the request from Mr Downer’s office was the only request for a copy of the report that had been lodged in the six months since the report had been issued?

Senator HILL—If you ask me: did I see the article? I read the article. Is Senator Faulkner quoting accurately from the article? I think so. Are the facts as asserted in the article correct? I do not know. I will refer them to Mr Downer.

Immigration: Detention Centres

Senator BARTLETT (2.16 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs. Is the minister aware that the private company that now has the contract for the management of the Baxter Immigration Detention Facility has instituted a new punishment regime that takes place in a separate compound known as Red 1? Is the minister aware of the reports that this regime involves a prolonged form of punishment including isolation and then a further development with slow access to various so-called privileges such as visits and phone calls? How is this punishment regime legal when it is only for administrative purposes? Why is it that asylum seekers in detention could be subject to punitive conditions under an arbitrary administration
regime without having clear criteria of what behaviour triggers such punishment?

Senator VANSTONE—I think I need more detail before I can possibly agree with the allegation that you make about a punishment regime. I have read of that terminology being used about detainees who might be placed in the management unit for a period of time. There are clear guidelines available to indicate to the management of the centre the circumstances under which that is appropriate. Threats of self-harm, for example, would make it appropriate. I think that the advice I had was that the rooms are in accordance with the specifications required in the report of the Royal Commission into Aboriginal Deaths in Custody so that people who are at risk of harming themselves can be under surveillance. I have seen stories that there are cameras in the showers and the bathroom facilities, but that is not correct. There are half-walls or walls that protect the privacy of people in that respect.

If people are there because of some type of violent outburst, they may then be shifted from there to one of the units in the centre and graduate gradually back into the normal community. I do not regard that as a punishment regime; it is a proper management of people who are at risk. You would expect them to be watched. If someone threatens self-harm and we were not watching them 24/7, you would ask why. It is a proper duty of care that is being exercised. When people become violent and damage Commonwealth property or are at risk of damaging other persons, that has to be taken into account as well. But if you mean something other than that that I am not aware of, I would be happy for you to provide me with that information and I will give you a fuller answer.

Senator BARTLETT—Mr President, I ask a supplementary question. Can the minister specify whether it is legal within the current law and the existing guidelines for detainees to be put in isolation or separation from all other detainees as a specific consequence for particular behaviour such as non-cooperation with instructions? What mechanisms are there for detainees to appeal such decisions or such actions by the detention centre management?

Senator VANSTONE—I am not of the view nor do I have any advice that indicates that anything the Commonwealth does in this area or that its contractor does is outside the law. This is, properly, one of the most scrutinised Commonwealth programs in existence. People who have any concern about it have access to a range of complaints if they think there is a justifiable complaint they want to make. They can do that through their legal advisers, the Red Cross, the UNHCR, the Commonwealth Ombudsman and the human rights commission. This is the most scrutinised program in the Commonwealth. I do not have a complaint about that. I probably agree that it should be as scrutinised as it is. Might I point out, Senator, that your use of the word ‘isolation’ is convenient. These people have a minimum number of hours that they can spend outside of that. There is a games room, a TV room and exercise capacity. It is not, as you describe it, isolation. (Time expired)

Taxation: Family Payments

Senator FORSHAW (2.21 p.m.)—My question is directed to Senator Patterson, the Minister for Family and Community Services. Can the minister confirm that families have had their bank accounts credited with more one-off $600 payments than they have entitled children? Can the minister confirm that some families with only one eligible child have received $1,200 in their bank accounts? Minister, why is the government overpaying families? When is it going to claw the money back?
Senator PATTERSON—I thank Senator Forshaw for the opportunity to say again what the government has done in giving two million families with 3.5 million children a bonus payment of $600 per child that has been paid into their bank accounts. Mr President, I know that you are getting sick of hearing this but I am going to keep saying it because people need to be reminded that, when you run the economy well, you can give a bonus to families and a bonus to carers—particularly to families. When the bonus goes out, as it has done since last Wednesday and will until tonight, families receive $600 per child. I have been advised by Centrelink that only customers eligible for the one-off bonus have been paid. They have advised me that these payments have been made to families currently in receipt of FTB A. It is up to families to inform Centrelink if their circumstances have changed. Some families’ circumstances change depending on who has custody of the children and changed arrangements in their families. Families need to advise Centrelink of their arrangements. Their bonus is tax free.

Where there is a clear case of fraud, the Commonwealth would seek to recover this payment. I announced only the other day some compliance measures that were undertaken in South Australia. One example of fraud, from memory—I will stand corrected—that I have seen recently was of a family claiming for three children for some period of time when they only had two. In that sort of case, they have committed fraud against the Commonwealth and are not eligible for the $600 bonus. But in any situation where a family have, bona fides, applied for their family tax benefit and have recorded the right number of children they have received the $600 payment which has gone into their bank account, and it is theirs. If there is any case of fraud—if the person has misrepresented their situation to the Commonwealth—of course it would only be proper for us to take that back, and that happens. There are some circumstances where some very small numbers of people would choose to misrepresent their situation to gain an advantage. But I have been advised that Centrelink indicates that only customers eligible for the one-off bonus payment have been paid.

Senator FORSHAW—Mr President, I ask a supplementary question. I note the minister did not deal with the question but rather used the opportunity to accuse parents in this country who have been overpaid of fraud because of the incompetence of her department. Can the minister confirm that Centrelink call centre staff are currently working overtime dealing with complaints from families who have been incorrectly credited with the one-off $600 payment and from carers who have missed out on the $1,000 payment? Minister, can you confirm that families are being told there is currently no mechanism for retrieving these overpayments?

Senator PATTERSON—That again gives me the opportunity to thank Centrelink staff, especially those in the call centres and the customer service officers, for the enormous amount of work they have undertaken. People have rung sometimes misunderstanding and surprised that they have got a payment. I would correct what Senator Forshaw has said. I have not accused families. I have said a very small number—almost handful in terms of the two million families who are being assisted—have not always been honest about the number of children they have or about their circumstances. It is a very small proportion of families. The rest who are entitled to FTB A have got their $600. People who are eligible for a carers payment have got it. Some people are calling because they do not realise it is a benefit for people who are on carers payment or carers allowance.
There will be some people who think they should get it. Centrelink staff are clarifying that for them. I want to say again on behalf of the government how much we appreciate the enormous amount of work that Centrelink staff have done, because it is a busy time of year when people are also ringing about their tax returns. (Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the gallery of members of one of the two committee delegations from the parliament of New Zealand who are here today. In this particular group we have members of the Select Committee on Government Administration, led by chairperson, Dianne Yates MP. On behalf of all senators, I welcome you to the Senate. Thank you for coming across the Tasman.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Howard Government: Health Policy

Senator HARRADINE (2.27 p.m.)—My question is to Senator Ian Campbell, the Minister representing the Minister for Health and Ageing. I refer to the Prime Minister’s statement in question time in the House yesterday in which he said:

The truth is that the human consequences that flow from the abuse of alcohol are far greater than the human consequences that flow from obesity ...

Is the Minister aware that alcohol consumption is second only to tobacco as a preventable cause of drug related morbidity and mortality? Is the minister aware that the total cost of abusing legal and illegal drugs was $34.4 billion and that alcohol contributed 22 per cent of this cost? As it is Drug Action Week, can the minister tell the Senate what the government is doing to reduce health, economic and social harms caused by alcohol and drugs?

Senator IAN CAMPBELL—I thank Senator Harradine for asking such an important question when there has been a significant focus on one issue over recent days—that is, childhood obesity. There have been some fairly bizarre proposals as to how you might address that. I believe that the Leader of the Opposition, who has suggested that we ban the advertising of food on television, has not addressed the issue of how you define a pie, an apple pie, a cream bun or some of the other fast foods. He has not suggested yet how to do that. I have a responsibility for this when it comes to road safety because he has not addressed how you might blindfold children as you drive past a McDonald’s sign or whether we have golden arches that fall down as young children are driven past.

That, of course, highlights the absurdity of Mr Latham’s new-found interest in public health issues.

But, of course, Senator Harradine is not Mr Latham. He has a serious and long-term interest in these public health issues. The Commonwealth is providing significant funding to the states through the public health outcomes funding agreements, just to mention one of the ways in which the Commonwealth seeks to address the issue of alcohol misuse. Senator Harradine, if I recall correctly, referred to tobacco and alcohol misuse. The Commonwealth through the public health outcomes funding agreements, which are being finalised at the moment, is providing record funding to all the states to invest in campaigns in relation to the reduction of harm and informing people of the risks of alcohol abuse. There will be a community good in that people will be well aware of the risks and those who are subject to those risks will have available to them public health facilities and the funding that is required to ensure that the risks that alcohol poses to the community are minimised.
The Commonwealth has made it quite clear through working with the industry that the way that the industry goes about marketing its products will be given close focus. I understand that the alcohol industry has worked very assiduously over recent months in particular to look at the issue of, for example, prepackaged and premixed drinks. I know that Trish Worth, the Parliamentary Secretary to the Minister for Health and Ageing, has worked very hard on this issue and that the alcohol industry have responded in a way that brings credit to them in ensuring that those premixed drinks are marketed in a way that do not make them available to younger people in the community. The public health outcomes funding agreements, which are being finalised at the moment, are the significant way in which the Commonwealth directs funding towards that very important issue.

Senator Harradine—Mr President, I ask a supplementary question. In line with the Prime Minister's words about 'the human consequences that flow from the abuse of alcohol', is the government considering a ban on the advertising of alcohol, especially TV advertising, which targets young and vulnerable people, as well as health warnings on alcoholic beverages?

Senator Iain Campbell—I will take on notice the specific issue of the advertising of alcohol so I can get the senator a very detailed response. It is a very important issue. As I have said, the industry itself in response to concerns raised by people such as Trish Worth have put an enormous effort into programs to ensure that underage drinkers and young drinkers get high-quality information about alcohol. I understand that the distilled liquors association is actually investing in excess of $1 million in special programs designed for young drinkers, who are quite often at risk because they lack the experience of older people about the effects of alcohol.

In my own area of responsibility, road safety, young people mixing alcohol and the driving of vehicles is of specific concern to the government. I will refer Senator Harradine's specific question to the minister and provide the Senate with a response.

Taxation: Family Payments

Senator Jacinta Collins (2.33 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. I ask whether the minister has seen a press statement issued by the Australian Council of Social Service which states:

... in the long-term, families could be no better off than if the extra $600 were never introduced. Because wages growth is expected to outstrip CPI over the next few years, the new indexation rules will see Family Tax Benefit rise more slowly than it would have under current rules. The value of the $600 increase will be washed away.

Minister, when are you going to come clean and admit that you have rigged the indexation of family payments to claw back money from families?

Senator Patterson—Every time Labor gets up and asks me a question on family tax benefit I will reply by saying that families are $600 better off per child—it is in their bank accounts—this week than they were last week because of the fact that we have run the economy well and we can actually give them a social dividend. In fact, we have increased the family tax benefit rate this financial year and will in every financial year after that. Mr McMullan has failed to guarantee that Labor will maintain that increase after the 2004-05 financial year. Mr Latham on the 7.30 Report was asked twice whether he would guarantee that families would be better off under Labor than under the coalition. Mr Latham refused to answer that question. Australian families want to know whether Labor will keep the $600 increase and whether Labor will actually guarantee that families will be no worse off. In the last
budget we gave $19.2 billion to Australian families. Two million Australian families with 3.5 million children are $600 better off per child this week than they were last week. The average family will get $1,200. We have actually made a commitment that the $600 will be maintained in real terms. That is a commitment that we have made. Labor has not committed to keeping the $600 beyond the next financial year.

Senator JACINTA COLLINS—Mr President, I ask a supplementary question. Can the minister explain why her department is now well over two weeks late on its own deadline in providing public answers to questions about the changed indexation formula of family payments? Minister, isn’t the delay because you are trying to cover up your government’s attempt to claw back family payments after the election?

The PRESIDENT—I remind senators to address their remarks and their questions through the chair.

Senator PATTERSON—The Labor Party are five or six weeks late, given the commitment that Mr Latham made that they would be unveiling their tax and their family policies after the budget. They are six weeks late in telling the Australian public. We have actually made a commitment that we will maintain the real value of the $600 payment. Labor have not made a commitment to keeping the $600 after the next financial year.

Law Enforcement: Drugs

Senator SANTORO (2.38 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister inform the Senate of how a strong combined effort by Australian law enforcement and border control agencies is stopping large amounts of illegal drugs hitting Australian streets? Also, is the minister aware of any alternative policies?

Senator ELLISON—Senator Santoro raises a very important issue which concerns all Australians, and that is the fight against illicit drugs. This government has spent an unprecedented $1 billion in the fight against drugs with its Tough on Drugs policy. This has involved an across-the-board assault on the issue of illicit drugs, dealing with health; rehabilitation of those who have a drug addiction and are affected by drugs; education to ensure that people, especially young Australians, are educated about the dangers of illicit drugs; and, of course, law enforcement. In that last respect, in the last three weeks we have seen some outstanding results in federal law enforcement in cracking down on attempts to bring illicit drugs into Australia.

Just yesterday Australia’s largest ever seizure of MDMA, or ecstasy, occurred. It involved the seizure of 340 kilograms of the drug, which could have equated to 1.3 million tablets reaching the streets of Australia. This was a combined law enforcement effort which involved Australian Customs, the Australian Federal Police, the Australian Crime Commission and the New South Wales police. It was an excellent example of across the border cooperation on law enforcement and, again, the great expertise of our federal law enforcement. Four people have now been arrested and they will appear in court.

Earlier—about two weeks ago—there was a seizure in Fiji. I am pleased we have representatives from New Zealand here today because that involved our New Zealand cousins in a great exercise where precursors to the crystal methamphetamine, with the capacity to produce up to one tonne of that drug, were seized. That was seized as the result of a combined operation in Fiji, and we believe a very large international syndicate was smashed as a result of our federal law enforcement working with the police in Fiji and with New Zealand law enforcement authorities. As the Federal Police have said, this
drug was destined for the region—and of course that included New Zealand and Australia. We believe the amphetamine laboratory which was seized during the operation was the largest ever discovered in the Southern Hemisphere.

As well as that, in my home state of Western Australia, two-thirds of a tonne of cannabis was seized at the port of Fremantle. This came about as a result of very good intelligence received through our front-line approach. That is a program that we have with businesses who work with Customs. As a result of that, the drug was seized at our container X-ray facility, demonstrating yet again the very good work done by Customs. Australian Federal Police were involved in that operation as well. At the end of March this year a very large operation in the Philippines occurred, where 1.5 tonnes of precursors for amphetamine type stimulants were seized. We believe that was destined for Australia.

This demonstrates that our Tough on Drugs policy is working. Yet, sadly, in Australia—three Labor governments: in New South Wales, Western Australia and South Australia—we have a soft on drugs approach to cannabis in South Australia and Western Australia and a heroin injecting gallery in New South Wales. What we should ask is: what is the opposition’s view in relation to this soft on drugs approach? Where is the Leader of the Opposition, Mr Latham, in relation to these programs which are undermining the national fight of Tough on Drugs? The United Nations has even been critical of the New South Wales policy. Where is Mr Latham in all of this?

**Distinguished Visitors**

The President—Order! I draw the attention of honourable senators to the presence in the gallery of two committee delegations from the parliament of New Zealand. The first of the delegations is from the Finance and Expenditure Select Committee, led by Mr Clayton Cosgrove, the chairman of the committee. The second is a group of members of the Select Committee on Government Administration, led by the chairperson, Diana Yates, MP. On behalf of all senators I warmly welcome our friends from across the Tasman. I apologise to those members of the ADF exchange program who I incorrectly called a New Zealand delegation earlier.

Honourable senators—Hear, hear!

**Questions Without Notice**

Sport: Drug Testing

Senator Lundy (2.43 p.m.)—My question is to Senator Kemp, Minister for the Arts and Sport. Does the minister agree with the views expressed by Mark Peters, the Sports Commission’s CEO, when he claimed to the Senate estimates committee the delays in hearing the French case were the fault of the Court of Arbitration for Sport and, in particular, his statement:

The recent delay is because CAS has not been able to hold its hearing, and that is what we have been waiting for.

Is the minister now aware that the court has written to the chair of the estimates committee strongly refuting that it is to blame for the delay of some 175 days from notification by the Australian Sports Commission of the discoveries to the hearing of the matter? Who is correct on this matter of delay, Minister: the Sports Commission CEO, Mr Peters, or the Court of Arbitration for Sport? Or was this just another aspect of the minister’s cover-up?

Senator Kemp—I am delighted that Senator Lundy has been given the right to ask a question on sport. Senator Lundy has been frozen out on a number of issues. Senator Lundy, I am very pleased that you have been given the nod. I also make the point that Senator Lundy would recall—
Senator Conroy interjecting—

Senator KEMP—Mr President, I wonder if Senator Conroy could be requested to contain himself.

The PRESIDENT—Senator, I remind you to ignore the interjections and address your remarks through the chair. Senator Conroy, come to order.

Senator KEMP—It is always important that these matters be resolved as quickly, as expeditiously, as possible; no-one would argue with that. Clearly a debate has occurred between the Australian Sports Commission and CAS. The Australian Sports Commission has a particular view about the delay of the case and CAS has a different view.

Senator Sherry—What is your view?

Senator KEMP—Obviously, we would have preferred that the case was heard more quickly. Obviously, we would have preferred that it was dealt with in a more expedient fashion. I am informed that the consistent instruction from the ASC and Cycling Australia to their lawyers was to handle the case as expeditiously as possible. My understanding is that a number of issues arose. The two major issues that took some time to process were the two-week period when the matter was referred to Lausanne by CAS for jurisdictional approval and a further two-week period when the parties were not able to agree on an arbitrator. So I have received an assurance, Senator Lundy, that the ASC did not at any time attempt to delay the process. Similarly, with regard to the allegations that the ASC lawyers did not mark the matter as requiring urgent attention when lodging papers on 10 March 2004, I am assured that this did not represent a delay. This debate will continue but the basic principle of all people involved here is that delays are not acceptable; that would be my view. I do not think, in light of what has now happened, that we should go back over this in great detail, to be quite frank, but I would be very concerned to make sure that any lessons that could be learnt from this are learnt and that the procedures of both the ASC and CAS are such that these types of delays do not occur in the future.

Senator LUNDY—Mr President, I ask a supplementary question. I ask again: didn’t the Sports Commission take 14 weeks to progress from the initial notification of the discoveries at Del Monte to filing the application with the court? Given the minister has confirmed the Sports Commission filed an application with the court that clearly indicated that they were not seeking an urgent hearing into this matter, isn’t that evidence of a deliberate attempt to delay? Under those circumstances, what action will the minister take to require Mr Peters to correct his evidence before the estimates committee, or will the court need to raise this as a matter of privilege?

Senator KEMP—The court is entitled to do what the court feels the court should do. Mr Peters has a different view of this matter. Clearly, the end result is that these matters should have been dealt with in a more efficient manner; I think that is correct. You could look at the various things—you could look at the procedures of CAS and you could look at the procedures of the Sports Commission—but the bottom line is that it is important that these things are dealt with efficiently, and this did take a long time.

**Health: Commonwealth-State Health Agreements**

Senator ALLISON (2.49 p.m.)—My question is to the Minister representing the Minister for Health and Ageing. Why is it that the Minister for Health and Ageing has dropped any reference to promoting women’s health in his negotiations with the states on public health outcomes funding? Why is there no mention of women’s health
services in rural communities, sexual assault services, female genital mutilation education or the alternative birthing services program in the draft agreement? If these programs are not specifically spelled out in the agreement, does this mean the money cannot be used on them?

Senator IAN CAMPBELL—Senator Allison’s question is important not only in its own right but also because it clearly seems that people at the state level—in the state government or the state bureaucracy—or others who have an interest in this are seeking to undermine the Commonwealth’s strong credentials in the area of women’s health and, of course, the government’s proposal to ensure that women’s health issues—particularly reproductive health, which Senator Allison has referred to in her question—are in fact substantially funded and, very importantly, funded over a lot longer timescale. At the moment in most of the states funding for women’s health issues, particularly funding in the area of sexual and reproductive health, is done over a maximum of three years. By incorporating funding for women’s health issues in the public health outcome funding agreements, as the Commonwealth has decided to do, we have in fact ensured that funding for those important issues is guaranteed over a five-year period.

I think Senator Allison will be pleased to know, and I hope that she will be able to take this back to constituents who have raised these issues with her, that the Commonwealth, as the minister for health assured the House of Representatives as late as last week, will ensure that all of the money going to women’s health, including reproductive health, will go to the states through the public health outcome funding agreements. Currently, as Senator Allison would know because we have had a question and answer on this in a previous sitting of this parliament, two of the states and territories—the ACT and South Australia in particular—are funded for women’s health issues under the public health outcome funding agreements and the other states, including her home state of Victoria, are funded through direct agreements. The Commonwealth has decided that it would be far more effective—and what I mean by that is to ensure that the money goes to delivering outcomes for women and for women’s health—if all of the funding for Australia were delivered through the public health outcome funding agreements.

Senator Crossin—Are you going to maintain women’s health services?

Senator IAN CAMPBELL—Senator Crossin interjects and asks an important question: how are we going to maintain those services? The answer is—and I ask Senator Allison and Senator Crossin to take this back—that the states will have to determine where this money goes. Some of the states are playing political games with women’s health funding by saying, ‘We don’t need to fund it anymore.’ If they do that, they will be choosing to do that against the interests of the Commonwealth and the Commonwealth taxpayers. We are guaranteeing that all of the existing money that goes into women’s health is delivered to the states through the public health outcome funding agreements. If the states want to play games with current providers of women’s health outcomes, through those who currently receive money from the Commonwealth, then the states need to be responsive to the concerns of those organisations.

It is interesting to note that the shadow spokesman for health told a Labor Party dinner on 3 June that she had concerns about the rumour that there would be fewer funds for family planning. She had heard a rumour. Can I set her mind at rest. It is a malicious rumour. It is untrue. All of the funding will be available. She seems to have said it was
bad to put family planning funding into the public health outcome funding agreements, but she apparently said in the same speech that taking immunisation funds out of that was also bad. *(Time expired)*

**Senator ALLISON**—Mr President, I ask a supplementary question. I thank the minister for that very confusing answer, and I give him an opportunity to answer again. I will be a bit clearer this time. Can he ask the minister whether it was his idea to remove any mention of promoting women’s health in his negotiations with the states? Was it his idea not to mention women’s health services in rural communities? Was it his idea to remove sexual assault services, female genital mutilation education or the alternative birthing services program from the draft agreement? Can the minister also say whether and why the review of the National Women’s Health Program that was undertaken by the department last year was ignored in these draft agreements. Can I remind the minister that that review recommended strengthening the government’s role in women’s health. Why have those recommendations been ignored and why is it that your government is scaling back its overall commitment to women’s health?

**Senator IAN CAMPBELL**—The answer may seem confusing to Senator Allison because she has a preconception. Can I please set her mind at rest. The Commonwealth are ensuring our commitment to women’s health is stronger than in the past because we are guaranteeing funding for women’s health through the public health outcome funding process for five years, as opposed to three. For the first time, we are putting women’s health for all of the states, with the exception of South Australia and the ACT, into the public health outcome funding agreements. You cannot take something out of an agreement that was never there in the first place. What we are doing is guaranteeing funding for a longer period, and Victoria is actually getting more funding. Senator Allison has sought a briefing from the minister, and he has asked me to say that he is very happy to receive Senator Allison in his office for a detailed briefing. She is very welcome to take up that offer of a briefing, because she does seem confused. *(Time expired)*

**Taxation: Family Payments**

**Senator WEBBER** *(2.56 p.m.)*—My question is to Senator Patterson, the Minister for Family and Community Services. Is the minister aware that families with children who are aged between 18 and 22 and working full time, and who do not receive any family tax benefit, have had their bank accounts credited with the government’s $600 one-off bonus? Can the minister confirm how many families who are not eligible for family tax benefit have been overpaid? Minister, why is the government overpaying families, and when is it going to claw back the money?

**Senator PATTERSON**—Yet again Labor gives me another chance in question time to tell Australian families what we have done. In the last budget we gave families $19.2 billion over five years, a social dividend because we have run the economy well. We gave a $600 bonus for every child to families who are eligible for FTB A. Senator Webber asked me about individual cases. There will be some families who were eligible for family tax benefit but whose children’s ages and eligibility changed during the year. Families who were eligible for family tax benefit A on 11 May will receive a $600 payment per child. I have been advised by Centrelink that only those customers eligible for one-off bonuses have been paid and that payments have been made to families currently in receipt of family tax benefit A.

Labor does not want us to ensure that families are better off. Mr Latham on the
7.30 Report failed to give a guarantee to Australian families, who were listening and waiting to see what he was going to do. He flitted like a butterfly from one policy to the next, not staying long enough to give any depth to a policy. When he was asked whether he would guarantee that families would not be worse off under Labor, guess what he said? Nothing. There was no guarantee. Then Mr McMullan was asked whether the increase in family tax benefit A for each child would be maintained by a Labor government. Mr McMullan failed to say that they would guarantee it past 2004-05.

We have given families $19.2 billion in increased assistance because we have run the economy well by having low inflation, low unemployment and low interest rates and because we have paid back $70 billion of Labor’s $96 billion debt and saved almost $6 billion in interest. That is why we can give families and carers a social dividend. We can do that as a result of managing the economy in a way which has enabled us to give a benefit to families, unlike Labor, which in their last year, as I have said before, had a $10 billion deficit, borrowing from the families—the children of the future. That is how Labor ran the economy. They were not in the position to give a social dividend to families. They were not in a position to give a $600 bonus payment and not in a position to increase family allowance. Mr Latham seems not to be in a position now to actually guarantee that families will not be worse off. Mr McMullan has not committed the increase of $600 for each child under family tax benefit A beyond the next financial year.

Senator WEBBER—Mr President, I ask a supplementary question. Minister, in addition to paying the bonus to families who are not eligible, why is the government spending millions of dollars on an advertising campaign yet not ensuring that clients will not be overpaid thus causing further confusion and unnecessary difficulties for Australian families? Minister, wouldn’t this money be better spent on fixing up the payments system rather than on a pre-election advertising stunt?

Senator PATTERSON—Senator Webber has not been here for very long and actually does not come from Victoria. Only last week I was reading the Herald Sun and I found a double-page spread from Mr Bracks telling the Victorian public about something or other that they were doing. Governments of all persuasions, Labor and Liberal, inform their public about changes. I only have to think about the family allowance supplement in 1989—Senator Webber was not here then. There was a vigorous campaign launched when the Labor Party introduced the family allowance supplement. There was newspaper advertising, radio advertising, cinema advertising and magazine advertising. There were letters to all families receiving family allowance, posters and leaflets distributed throughout the community and information in school newsletters and union publications. The cost of that was about $18 million in today’s terms. So Labor, when it was in government, actually informed the public about changes that it made and we will do the same thing to make sure families know about the $600 payment. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Iraq: Treatment of Prisoners

Senator HILL (South Australia—Minister for Defence) (3.01 p.m.)—I have a response from Mr Downer to a question from Senator Hutchins that I took on notice on 15 June. I seek leave to incorporate the answer in Hansard.

Leave granted.
The answer read as follows—

**Question:** When did Australian officials in Washington or Canberra first become aware of Red Cross concerns about the treatment of prisoners at Guantanamo Bay?

**Answer:** October 2003.

**Question:** Who raised these concerns—the Red Cross or representatives of the detained Australians?

**Answers:** A spokesperson for the International Committee of the Red Cross (ICRC) raised those concerns publicly.

**Question:** What was the nature of those concerns?

**Answer:** The ICRC spokesperson was quoted in the press as saying that detainees had suffered a ‘worrying deterioration’ in their ‘psychological health’. He said the ICRC was concerned ‘about the impact the seemingly open-ended detention is having on the internees’.

**Question:** Could the Minister make available to the Senate copies of those reports?

**Answer:** The Government has never had access to ICRC reports on Guantanamo Bay. In a meeting with the Australian Ambassador in Geneva on 26 May 2004, the ICRC President confirmed the Government’s understanding that such reports have been passed to the US in confidence and could not be provided to Australia by the ICRC. He also said that neither Mr Hicks nor Mr Habib were mentioned in those reports.

**QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS**

**Taxation: Family Payments**

**Senator JACINTA COLLINS** (Victoria)

(3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Patterson) to questions without notice asked by Senators Forshaw, Collins and Webber today relating to family assistance.

It is very sad that we have now come to the question of the competence in which some of these payments are being delivered. In question times earlier in the last fortnight we have highlighted the nature of these payments and how they are pretty much a crude election bribe by the government rather than a serious attempt to remedy the problems with the family tax system and the debts that it has been generating for families. Now we have the circumstances where Centrelink are making these payments to families who are not eligible and families who, indeed, do not need these funds.

The minister’s response today was to simply say that she had made inquiries of Centrelink and that if this was occurring it was fraud. Unfortunately, some of the examples that have come to the opposition are clearly not fraud. There are problems with how Centrelink is administering these payments, and the minister failed to address these issues very seriously. She continues to get up and prattle on about how this gives her another opportunity to outline how the government is bribing Australian families to just cop their riddled family tax debt system for another three years rather than addressing the issues that have been raised.

I say it is sad that the competence of Centrelink comes into question in this way because we all know that Centrelink has been set the task of delivering election bribes on very short notice. We know that they are having difficulties meeting this task. In fact, the minister herself has used it as an excuse for why the department has not been able to respond to questions asked in estimates about the adjustments to the indexation formula that went through with the legislation for these payments. The department set their own deadline; the minister misrepresented the Hansard when she indicated that it was only some tentative time frame. It is quite clear in Hansard that the department indicated that within the week we would have answers about how the indexation formula was meant to be applied. We are still waiting...
for those answers. More than two weeks later, we are still waiting for those answers.

Senator Knowles—We’re still waiting for your policy.

Senator Jacinta Collins—The minister gets up here and says, as has the senator just now, ‘But we’re waiting for your policy.’ The unfortunate fact of life here is that this government will not even produce forward estimates now. No forward estimates are provided in this budget. So much for this charter of budget honesty. The government is withholding information because we are now far more confident that they are trying to claw back payments. They are trying to claw back these family payments that they claim to be delivering now as a wonderful gift to Australian families. Australian families have every reason to be incredibly cynical about this government.

Let us have a look at their record. In the year 2000, pensioners were subjected to the claw back of their pension increases. Their compensation for the increased costs of the GST was clawed back. It was a nasty and cynical ploy then and it remains so with respect to these payments today. But if we look at the last election in relation to the family payments debts, the $1,000 waiver was put into place. But it only lasted in an election year. There was no flexibility; no measure of dealing with these issues year after year until now.

The government have modified their approach this time. Families do not get a $1,000 waiver; they get $600 in advance. But the problem with the advertising program about this is that it does not warn families that they have this $600 in advance. It does not warn them that they have delayed their debt notices until September but, in September, those debt notices will arrive. They will have another $600 to help them to ameliorate those but, if the standard debt of $900 continues, which is the average debt for families, there will not be much left of these wonderful payments that Senator Patterson talks about. She has sought to avoid answering serious questions about the information that this government will not provide so that people can be accountable for their policies. There have been no forward estimates and no answers about how you diddled the indexation formula, yet you have the audacity to get up here and say, ‘But where are your policies?’ It is outrageous.

Senator Knowles (Western Australia) (3.07 p.m.)—We might well ask: where are your policies? You have spent nearly 8½ years in opposition. This hopeless shadow minister, who is about to trot out of this chamber, has not been able to deliver a policy after eight years in opposition. Off she wanders into the wilderness again. Here we are debating something that we debated last week, and will no doubt debate again before parliament rises for the winter recess. The fact remains that this opposition have been in the opposition chairs for eight long years—and it has not been long enough, let me tell you—and they still have not released a policy.

Today, by way of interjection, Senator Collins screeched, ‘Two weeks!’ Well, let us see whether it is two weeks. The Leader of the Opposition, Mr Latham, said to us long before the budget, ‘Wait until the budget because we don’t know what the books look like. After budget week we will release our policies.’ That was five weeks ago and there are still no policies. So let us see whether Senator Collins is right when she screeches, ‘Two weeks!’ I cannot believe that for eight years this opposition have been so bereft of policy that they cannot even come up with a family policy.

Last night on the 7.30 Report Mr Latham could not defend their inability to come up...
with a family policy. He said that it was still being done—still being thought about and still being contemplated, after eight years in opposition. That is in vast contrast to this government, which has provided around two million families—with 3½ million children—with a benefit. By the end of today, about two million families will have received an average payment of $1,200 in their bank accounts. And what happens? The mob on the other side grizzle about it. That is all they can do: complain about it. Why? Firstly, because they did not think of it; and, secondly, they would never be able to afford it because they would never be able to run an economy whereby it was in a strong enough position to return a dividend to Australian families.

Let us take, for example, an eligible family with four children. They will receive $2,400. And all the opposition can do is say, ‘There’s a problem with it and you shouldn’t be getting it.’ Why didn’t they ever deliver such a policy in 13 years of government? In eight years of opposition they could not do it. This bonus is completely tax free and it is thanks to a strong economy. If this economy had continued the way it was going under Labor, with $96 billion of debt and growing—instead of it being reduced by this government by $70 billion and decreasing—then nothing would have happened for families. They would not have gotten any return whatsoever. This budget is about giving families choices and opportunities. All we hear from this carping opposition is criticism after criticism after criticism.

The new family assistance measures will provide an additional $19.2 billion over five years, and yet the opposition criticise them. It is almost breathtaking how this mob criticise everything while offering nothing as an alternative. One would have thought that, when they have had eight years to contemplate their navels and sulk about being in opposition, by now—X number of weeks or months out from an election—they would have presented an alternative. But, no, even Mr Latham last night continued to say, ‘We’re thinking about it.’ I have to say that this is the largest package of assistance ever offered by an Australian government. That makes it even more amazing that the opposition can only sit there and criticise.

If they think that it is inherently wrong for families to get $1,200 then let them come out and say so. If they think they have a better alternative, let us hear it. But let us hear it today. Do not put it off again so that families still do not know what the policy is. After all, it is already five weeks late, seven years late or six years late. Let us hear what your alternative is today. Do not just come in here and criticise in the way that you have for weeks, because it is getting a little bit tiresome and tedious for the Australian people. They actually enjoy getting a dividend from a good government that has managed the economy well.

Senator FORSHAW (New South Wales) (3.12 p.m.)—Let me remind Senator Knowles and other senators that it was the Hawke Labor government that introduced the system of family allowance and family allowance supplements. When it introduced those payments, the Hawke Labor government gave a massive boost to Australian families. So when Senator Knowles stands up and alleges that nothing was done about family payments, family allowances and so on during the term of the Labor government she is totally wrong. We actually created the system which has since been replaced by the family tax benefits A and B.

Senator Knowles asks, ‘Where are your policies?’ Let me tell you about the policies of this government. What they have done for the last seven years and eight or nine months is rip billions of dollars off the Australian taxpayer. They are the highest taxing gov-
ernment in the history of this country. They have ripped billions out of health, education and so on. Then, a few months before an election, they bring down a budget where they seek to give some of that money back—and they seek to do it in a very rushed manner. This week Australian families who are entitled to receive family tax benefit A are having payments of $600 per eligible child credited to their bank accounts. However, in their mad rush to get this payment into the bank accounts of families so that they can then call an election, hoping to ride in on the back of this, they have actually stuffed it up. Anyone who attended the estimates hearings would have heard the department itself acknowledge that it was going to have massive problems coping with the demand placed upon it administratively to get that money out so quickly.

Senator Johnston—They’ve done it.

Senator FORSHAW—They have done it, Senator Johnston says. Let me tell you what they have done. I will read to you from an email that I received just yesterday. I can assure you, Senator Johnston, there are many more of these situations. The email is addressed to me. It says:

Hi Michael. Thought I should just let you know about a situation which has just come to my attention which may be of interest to you and Mark Latham. My bank account was suddenly increased by $1,200 on Friday, not $600 as I had been expecting. As I only have one child under 18—both others are nearly 22 and 20 respectively and have full-time taxpaying jobs—I am sure that a government stuff-up has paid me double my entitlement.

She names the bank. She checked this with the bank when she noticed the additional amount credited to her account. She says:

The bank told me I was the second person that day who was overpaid. How many more mistakes have been made? Will they be demanding the money back when they realise their errors? How many people have not been paid their full entitlements?

That was drawn to my attention yesterday. We now know that there are many more situations where the payments being made to families are incorrect. When I asked Senator Patterson a specific question today about this issue—not about whether they should get the $600 but about what the government is going to do in situations where it has actually paid more into the accounts of families than they are legitimately entitled to—what was her response? She stood there and accused Australian families in that situation of committing a fraud, of not telling Centrelink of changes in their circumstances. In the situation that has been drawn to my attention—and we have got others—there has been no change in the circumstances of these families at all.

Senator Vanstone—You’re not being honest and you know it.

Senator FORSHAW—It is true, because it has been made very clear that any family that was entitled as at the day of the budget to family tax benefit A would get $600 per child. We now have situations where families are being paid more. What we want to know is: why has the situation been allowed to occur where, instead of just getting the $600 so-called bonus, families have had a further debt created for them? That is the question that Senator Patterson refused to answer. You cannot answer that question by trying to shift the blame onto those families, as if it is somehow their fault or their mistake. It is not their fault; it is not their mistake. The minister should get onto her department and get it fixed. (Time expired)

Senator JOHNSTON (Western Australia) (3.17 p.m.)—My question is this: what on earth are the opposition on about when the Australian government are so successful that we can deliver a family tax benefit of $600
and maintain a budget surplus? This is the fundamental question that the opposition simply want to choke upon. We have done the job of providing for the people of this nation so well—we can provide them with a family tax benefit like they have never had before and maintain a surplus—that the opposition are absolutely jaundiced, because they could never do it as a result of their blatant and obvious mismanagement. That is the problem the opposition suffer. Here are families with dependent children being paid a reward and being assisted, and all the opposition can do is say what a terrible, shocking thing it is.

The psychology of the Labor Party is that, when an overpayment is made, when a miscalculation of income is made, when someone gets a payment to which they are not entitled, they should blame someone else. That is the psychology behind the Labor Party’s move here. They cannot come to terms with the fact that good economic management has delivered a dividend. Senator Collins called it a bribe. People who need assistance who have dependent children can benefit from a payment that will assist with all manner of things: schooling, transport, schoolbooks, clothing—you think about it. This is a bribe according to the Australian Labor Party. I say this is a reward to the Australian people for electing a very good government. It is as simple as that, and the opposition are simply choking on the fact.

The More Help for Families measures will provide an additional $19.2 billion in assistance over the coming five years. This is the largest package of assistance ever put in place by an Australian government. Let me say that again: this is the largest package for families with dependent children ever put in place by an Australian government. What a good government it is. How did we do it? We did it through good, sound, strong economic management in the face of huge adversity: the Asian downturn, the US and European downturns and the SARS virus. You name it—we confronted it and beat it. This is the More Help for Families package. Of course, the opposition do not understand what families need. The opposition have no concept of what benefits this will deliver to families. We are helping families with the cost of raising children. What could be wrong with that? We are improving rewards for work for most families and helping them balance their work and family responsibilities. This package builds on the significant reforms to family assistance undertaken by the Howard government in the new tax system, inaugurated in the year 2000, and the Family Tax Initiative, announced way back in 1996 by this very good government.

Around two million eligible families will receive a one-off payment of $600 per child for the family tax benefit part A and for other eligible children before 30 June 2004. As Senator Forshaw has already indicated, Centrelink are delivering on that promise. As I stand here today, the government has been true to its word. The money is going into the bank accounts as I stand here now. What a good cause and what a good payment it is. Eligibility for the new one-off $600 per child payment will be linked to: receipt of the family tax benefit part A on budget night for Family Assistance Office instalment customers; a confirmed entitlement to family tax benefit A on budget night in respect of the 2002-03 income year for lump sum claimants; and receipt by parents and nominees of dependent youth allowance for 16- to 17-year-old children, as mentioned on budget night. From 1 July 2004, there will also be an ongoing family tax benefit part A supplement—*(Time expired)*

Senator WEBBER (Western Australia) *(3.22 p.m.)*—The only problem with what Senator Johnston was talking about is that it does not seem to be adequately linked to
families that were in receipt of family tax benefit part A on budget night. As far as I am aware, there are no families with 22-year-old children that are eligible to receive family tax benefit part A, never mind the one-off $600 bonus that the government unveiled in its budget. So we need to get this straight. This is a massive systems failure. It is yet another systems failure on top of the fact that the system currently traps thousands of Australian families into debt in other ways. The other thing we need to understand very clearly is that, unlike what those opposite would have people believe, the Labor Party does support hardworking Australian families. The Labor Party supports returning to those hardworking Australian families the money that this government has clawed back from them over the last eight years.

As I was saying, the fiasco of the implementation of the budget night one-off bonus, soon to be followed up by another one, highlights the current system and the problems within it. The current system actually penalises those who can least afford it. It penalises those families at the bottom end of the system who have the greatest difficulty in estimating their income. They are already penalised. To then receive extra payments they are not necessarily entitled to in units of $600 forces those families into massive debt. Australian families, especially hardworking, low-income Australian families, deserve a lot better from this government. As it is implemented, the current family tax benefit system is ill-conceived. Through no fault of their own, families, particularly those with 22-year-old children or those who have received $600 for children they do not actually have, find themselves as debtors to the Commonwealth.

This is a system where 30 per cent of recipients end up making incorrect estimates of their income. Surely that does not mean that 30 per cent of recipients are fraudulent, as the minister would have us believe, or incompetent, as other members of the government would have us believe; it means that the system is too complex and that it traps these families in debt. Let us take, for example, a family that gets its income estimate wrong by $1,800 per annum. That is $34 per week. That is not a rort; it could just be that the income earner in that family forgot about the extra one or two hours of overtime they work every now and then. That family will then end up with a debt of $1,400 to the Commonwealth. Let us hope that they do not get any of those extra $600 one-off bonuses that the government seems to be popping into people’s bank accounts, whether they are eligible or not.

So what does this government do? Its response to the fiasco of the family tax benefit payment system is to blow millions of dollars on advertising. I suppose that is actually useful for the families that are suddenly discovering they are getting this payment when they are not eligible for it, so they will actually understand why their bank accounts are going up by units of $600 when they were not expecting any payment at all or were expecting a lower payment. But we need to ask ourselves: what else could that money have been spent on? It could have been spent on fixing the system that administers the family payments. It could have been spent on providing increased support for those hardworking, low-income families. It could have been spent on repairing the damage caused by the decline in bulk-billing, for instance. But, instead, this government blows millions of dollars on advertising, gives tax cuts to the big end of town and, through its own ineptness, is going to force more families into debt.

It is ironic that this government is championing the fact that it is cracking down on debt for Centrelink customers. They are having a debt crackdown, apparently. Yet, at the
same time, this government is forcing a whole raft of new families to become debtors to the Commonwealth—families who probably never before in their lives had problems with the family tax benefit system but who through no fault of their own are being paid in units of $600 for children who are 20, 22 or who knows how old, for children who do not exist or for three children when in fact they have two. (Time expired)

Question agreed to.

PETITIONS

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

Education: Funding
To the Honourable the President and Members of the Senate in Parliament assembled:
The petition of the citizens of Australia undersigned shows:
A well funded Public Education system is vital to the maintenance of a fair and democratic Australian society.
We need our public schools to be well resourced.
This requires the Federal Government to provide a fairer model for funding Australian schools.
Your petitioners therefore request the Senate to:
Ensure that the funding policies of the Commonwealth Government are reformed to provide increased and fairer funding for public schools.

by Senator Bolkus (from 202 citizens) and
Senator Buckland (from 251 citizens).

Education: Funding
To the Honourable the President and Members of the Senate in Parliament assembled:
The petition of certain citizens of Australia undersigned draws the attention of the Senate:
For over 150 years our country has been served by a comprehensive and inclusive system of public education. Public education has contributed to successful lives and democratic social development in an Australia which is highly skilled and economically strong. It has built our national identity and democratic traditions and given the capacity for active citizenship to the Australian people.
All of this has been possible only because the system has enjoyed public confidence and public investment.
At this time both are under threat Public confidence has been undermined by divisive attacks and public investment has been distorted by an unfair system of federal funding which favours an already well-off minority to the detriment of those in genuine need.
We therefore call on all Senators to condemn these injust attacks, and to:
• accept national responsibility to provide priority in funding to public schools to enable them to continue to provide high quality education to all, regardless of wealth, location, ethnicity, religion or special needs; and,

The States Grants Act needs to be amended to make the share for government school students fairer. We need our public schools to be well resourced.
Your petitioners therefore ask the Senate to:
Ensure that the funding policies of the Commonwealth Government are reformed to provide increased and fairer funding for public schools.

by Senator Buckland (from 32 citizens).
• replace the current unfair SES funding model with a new Commonwealth and State system which provides enhanced educational resources to schools allocated on the basis of educational need and which ends public funding to wealthy schools which are already well resourced.

by Senator George Campbell (from 160 citizens).

Indigenous Affairs: Government Policy
To the Honourable President and members of the Senate in parliament assembled:
The petition of the undersigned shows:
That the current intention of the Government to abolish the rights of Aboriginal and Torres Strait Islander people to exercise their right of self-determination and self-management, will severely disadvantage Aboriginal and Torres Strait Islander people.
Your petitioners request that the Senate:
1. oppose any legislation for the abolition of ATSIC unless and until an alternative elected representative structure, developed and approved by Aboriginal and Torres Strait Islander peoples is put in place and which would, at the same time assume the function of ATSIC.
2. oppose any move to appoint an advisory committee as contrary to the rights of Aboriginal and Torres Strait Islander people to elect their own representatives.
3. oppose any move to diminish, dismantle, destroy and/or erode the principles of self-determination and self-management since any such action would turn back the clock on hard won rights of Aboriginal and Torres Strait Islander people.
4. strongly defend these rights of self-determination and self-management of Aboriginal and Torres Strait Islander people previously supported by the Australian Parliament.
5. oppose any move to main-stream services for Aboriginal and Torres Strait Islander people as this too would severely disadvantage Aboriginal and Torres Strait Islander people.

by Senator Marshall (from 13 citizens) and

Senator O’Brien (from 50 citizens).

Petitions received.

NOTICES
Presentation
Senator Hutchins to move on the next day of sitting:
That the Foreign Affairs, Defence and Trade References Committee present an interim report on its inquiry into the effectiveness of the Australian military justice system on 9 September 2004.

Senator Bolkus to move on the next day of sitting:
That the time for the presentation of the report of the Legal and Constitutional References Committee on the needs of expatriate Australians be extended to 5 October 2004.

Senator Ridgeway to move on the next day of sitting:
That the Rural and Regional Affairs and Transport References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 23 June 2004, from 5.30 pm.

Senator Mason to move on the next day of sitting:
That the time for the presentation of the report of the Joint Standing Committee on Electoral Matters on electoral funding and disclosure and any amendments to the Commonwealth Electoral Act necessary in relation to political donations be extended to 12 August 2004.

Senator Cherry to move on the next day of sitting:
That there be laid on the table, no later than 6.30 pm on Thursday, 24 June 2004, the documents described in paragraphs (a) and (b), in response to applications 020/2002 (Monsanto) and 021/2002 (Bayer) to the Office of the Gene Technology Regulator (OGTR) for the commercial release of GE canola:
(a) all submissions from state governments in response to the above applications and all submissions from other state bodies, including inter- and intra-departmental committees providing peer review, comments and feedback to the OGTR; and

(b) all submissions from committees formed under the Gene Technology Act 2000 in relation to the above applications, including submissions from individuals in their capacity as members of those committees.

Senators Allison and Cherry to move on the next day of sitting:

That the Senate—

(a) congratulates the Queensland Government on the announcement of its intention, as part of a wide-ranging blueprint for a campaign to encourage the development of a sustainable Queensland ethanol industry which the Queensland cabinet endorsed on 22 June 2004, to appoint an ethanol advocate and include the 12,900 state government vehicles in the campaign;

(b) notes the Queensland Premier’s call for the Federal Government to ‘mandate the availability of ethanol and indefinitely extend the fuel excise exemption’, to give the fledging industry the certainty it needs to expand;

(c) encourages all states to consider adopting similar action plans; and

(d) calls on the Federal Government to phase in the mandated use of 10 per cent ethanol-blended petrol.

Senator Forshaw to move on the next day of sitting:

That the following matters in relation to government advertising be referred to the Finance and Public Administration References Committee for inquiry and report by 27 October 2004:

(a) the level of expenditure on, and the nature and extent of, government advertising since 1996;

(b) the processes involved in decision-making on government advertising, including the role of the Government Communications Unit and the Ministerial Council on Government Communications;

(c) the adequacy of the accountability framework and, in particular, the 1995 guidelines for government advertising, with reference to relevant reports, guidelines and principles issued by the Auditor-General and the Joint Committee of Public Accounts and Audit;

(d) the means of ensuring the ongoing application of guidelines based on those recommended by the Auditor-General and the Joint Committee of Public Accounts and Audit to all government advertising; and

(e) the order of the Senate of 29 October 2003 relating to advertising projects, and whether the order is an effective mechanism for parliamentary accountability in relation to government advertising.

Senator Cherry to move on the next day of sitting:

That there be laid on the table by the Minister representing the Minister for Industry, Tourism and Resources, no later than 6.30 pm on 24 June 2004, the following documents:

Any assessment or analysis of the synthetic aperture radar work commissioned or acquired by Geoscience Australia, or related documents.

Senator Stott Despoja to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the ceasefire agreement signed on 8 April 2004 by the Khartoum Government and Darfur’s two rebel groups—the Sudan People’s Liberation Army and the Justice and Equality Movement—has been repeatedly violated,

(ii) there is widespread evidence to suggest that the Khartoum Government has
provided support to the Janjaweed militias and is now attempting to integrate them into its official forces,

(iii) it is also alleged that the Khartoum Government has obstructed humanitarian organisations in their attempts to gain access to war-affected areas,

(iv) it is estimated that there are around 1.2 million Internally Displaced Persons within Sudan,

(v) the conflict has already claimed around 30 000 lives since it commenced in February 2003, and

(vi) estimates of the number of Sudanese who are still at risk range from 350 000 to 2.2 million;

(b) urges the Sudanese Government to:

(i) provide immediate and full access for humanitarian organisations to war-affected populations in Darfur,

(ii) cease logistical, equipment and direct military assistance to the militias, and

(iii) ensure that summary executions by the Government-sponsored militias cease; and

(c) calls on the Australian Government to make representations to United Nations Security Council members regarding the need to:

(i) take decisive action to prevent further loss of life within Sudan, and

(ii) condemn the atrocities and insist upon the deployment of human rights monitors to accompany the Internally Displaced Persons back to their home areas.

Senator Faulkner to move on the next day of sitting:

That there be laid on the table by the Leader of the Government in the Senate, no later than 4 pm on Thursday, 24 June 2004, a copy of that part of the Office of National Assessments’ (ONA) classified document log which relates to requests for, and movements of, the December 2002 ONA report on the humanitarian impact of the war in Iraq, during the period 16 June to 23 June 2003.

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

That the second reading of the National Health Amendment (Pharmaceutical Benefits–Budget Measures) Bill 2002 [No. 2] be restored to the Notice Paper and be made an order for a later hour of the day.

Senator Brown to move on the next day of sitting:

That the Senate—

(a) notes, in relation to plans for expanded container ports in New South Wales, that:

(i) the proposal by Sydney Ports to develop a third terminal at Botany Bay will have a massive detrimental impact on residents and the environment, including increased container truck traffic, threats to internationally-recognised waterbird habitat, contaminated groundwater and beach erosion, and

(ii) the Mayors of Newcastle and Wollongong support the development taking place in their respective cities; and

(b) opposes Sydney Ports’ plan to develop a third terminal at Botany Bay.

Senator Stott Despoja to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) to date, 22 universities have announced that they will increase their higher education contribution scheme (HECS) fees, most of them by the full 25 per cent across all disciplines,

(ii) increasing HECS fees will further deter students from low socio-economic backgrounds,

(iii) all three South Australian universities will increase HECS fees by 25 per cent in 2005, severely impacting student choice in South Australia, and

(iv) by 2008, the Government’s policy ‘Backing Australia’s future: Our
universities’ will have shifted more than $1 billion of the costs of higher education to students through HECS increases and increases in domestic full-fee paying student numbers;
(b) supports students in their attempts to prevent the remaining universities from increasing HECS fees; and
(c) condemns the Government for under-funding universities for the past 7 years to such an extent that universities are now turning to students to provide a short-term increase in funding.

COMMITTEES
Foreign Affairs, Defence and Trade References Committee

Meeting
Senator HUTCHINS (New South Wales) (3.29 p.m.)—by leave—I move:
That the Foreign Affairs, Defence and Trade References Committee be authorised to hold a public meeting during the sitting of the Senate on 23 June 2004, from 9.30 am to 12.30 pm, to take evidence for the committee’s inquiry into the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002.
Question agreed to.

NOTICES
Postponement
Items of business were postponed as follows:
Business of the Senate notice of motion no. 1 standing in the name of Senator Forshaw for today, proposing the reference of matters to the Community Affairs References Committee, postponed till 23 June 2004.
General business notice of motion no. 895 standing in the name of Senator Allison for today, relating to nuclear weapons systems and Colonel Stanislav Petrov, postponed till 23 June 2004.
General business notice of motion no. 911 standing in the name of Senator Cherry for today, relating to the People’s Mojahedin Organisation of Iran, postponed till 23 June 2004.
General business notice of motion no. 912 standing in the name of Senator Allison for today, proposing that the Environment, Communications, Information Technology and the Arts Legislation Committee reconvene to further consider the 2004-05 Budget estimates, postponed till 23 June 2004.

GOVERNMENT RESPONSES TO SENATE RESOLUTIONS

Senator STOTT DESPOJA (South Australia) (3.30 p.m.)—At the request of Senator Bartlett, I move:
That the Senate—
(a) notes the Government’s decision to implement a judicial review of the lease arrangements for Centenary House, as called for by an order of the Senate of 4 March 2004; and
(b) calls on the Government to act on other, more long-standing Senate resolutions calling for inquiries, namely:
(i) the order of the Senate of 15 May 2003 urging the establishment of a Royal Commission into child sexual abuse in Australia, and
(ii) the order of the Senate of 16 October 2003 calling for the establishment of a judicial inquiry into all aspects of the People Smuggling Disruption Program operated by the Commonwealth Government and agencies and, in particular, issues surrounding the sinking of the boat known as the SIEV X, with the loss of 353 lives.
Question agreed to.

Djerrkura, Mr
Senator RIDGWAY (New South Wales) (3.31 p.m.)—I move:
That the Senate—
(a) notes with sadness the passing on 26 May 2004 of senior Wangurri elder and cultural leader, Mr Djerrkura;
(b) pays tribute to Mr Djerrkura as an advocate of economic development through his leadership of Yirrkala Business Enterprises which operated independently, providing employment and training to local Aboriginal people;

(c) notes that he was awarded the Order of Australia in 1984 and was involved in the following official positions during his life:

(i) Chairman of the Aboriginal and Torres Strait Islander Commission (ATSIC) Board of Commissioners,
(ii) Chairman of the Batchelor Institute of Indigenous Tertiary Education,
(iii) Chairman of ATSIC Commercial Development Corporation,
(iv) Northern Territory North Zone ATSIC Commissioner,
(v) Chairperson of the Miwatj Provincial Governing Council,
(vi) Director of the Board of the Indigenous Land Corporation,
(vii) board member of the Council for Aboriginal Reconciliation, and
(viii) board member of the National Australia Day Council;

as well as other key positions in Aboriginal organisations and in the former Department of Aboriginal Affairs; and

(d) acknowledges his outstanding contribution to public life in Australia, his cultural leadership and his work in trying to build bridges between Indigenous people and other Australians.

Question agreed to.

COMMITEES

Scrutiny of Bills Committee

Senator HUTCHINS (New South Wales) (3.32 p.m.)—At the request of Senator Crossin, I move:

That the Standing Committee for the Scrutiny of Bills be authorised to hold public hearings in relation to its inquiry into entry, search and seizure provisions in Commonwealth legislation.

Question agreed to.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.32 p.m.)—by leave—I move:

That—

(1) On Tuesday, 22 June 2004:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to adjournment;
(b) the routine of business from 7.30 pm shall be government business only; and

(c) the question for the adjournment of the Senate shall be proposed at 9.50 pm.

(2) On Wednesday, 23 June 2004:

(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 10.30 pm;

(b) the routine of business from 7.30 pm shall be consideration of:

(i) Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005 and four related bills—second reading, and

(ii) Sex Discrimination Amendment (Teaching Profession) Bill 2004—second reading speeches only; and

(c) the question for the adjournment of the Senate shall be proposed not later than 9.50 pm.

(3) On Thursday, 24 June 2004:

(a) the hours of meeting shall be 9.30 am to adjournment;

(b) if the Senate is sitting at midnight, the sitting of the Senate shall be suspended till 9 am on Friday, 25 June 2004;

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

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

(e) divisions may take place after 4.30 pm; and

(f) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below, including any messages from the House of Representatives:

Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 and a related bill
Superannuation Budget Measures Bill 2004
Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 and a related bill
Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003
Tax Laws Amendment (2004 Measures No. 3) Bill 2004
Extension of Charitable Purpose Bill 2004
Family and Community Services and Veterans’ Affairs Legislation Amendment (Income Streams) Bill 2004
Higher Education Legislation Amendment Bill (No. 2) 2004
Family and Community Services and Veterans’ Affairs Legislation Amendment (Sugar Reform) Bill 2004
Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003
National Health Amendment (Pharmaceutical Benefits–Budget Measures) Bill 2002 [No. 2]
Treasury Legislation Amendment (Professional Standards) Bill 2003
Australian Energy Market Bill 2004 and a related bill
Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004
Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004
Sex Discrimination Amendment (Teaching Profession) Bill 2004
Tuesday, 22 June 2004

Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005 and four related bills
Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004
Health Legislation Amendment (Podiatric Surgery and Other Matters) Bill 2004
Excise and Other Legislation Amendment (Compliance Measures) Bill 2004
Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004
Industrial Chemicals (Notification and Assessment) Amendment (Low Regulatory Concern Chemicals) Bill 2004.

I seek leave to make a short explanation.

Leave granted.

Senator IAN CAMPBELL—The motion refers to two items which I have removed by hand. Paragraph (2)(b) refers to the routine of business for tomorrow night, and I have removed the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004. That is the only change that has been made, but I have indicated privately to the Manager of Opposition Business the willingness of the government to remove one other bill from the list at this stage, but I would need to courteously ring the relevant minister before I do that. I just put on the record my saying that I will do that.

Question agreed to.

IRAQ: TREATMENT OF PRISONERS

Senator BROWN (Tasmania) (3.35 p.m.)—I move:
That there be laid on the table by the Minister for Defence, no later than 4pm on Wednesday, 23 June 2004, the following document:
The 61-page report and nine additional annexures, prepared by the Department of Defence’s Iraq Detainees Fact-Finding Team which formed the basis for the statement by the Minister for Defence (Senator Hill) to the Senate on the abuse of detainees held in Iraq, prepared by Mr Michael Pezzullo, Head of Infrastructure, Department of Defence for the Secretary of the Department of Defence and the Commander of the Defence Forces, and referred to by the Minister in the 2004-05 Budget estimates hearings of the Foreign Affairs, Defence and Trade Legislation Committee on 17 June 2004.

Question agreed to.

DOCUMENTS

Register of Senate Senior Executive Officers’ Interests

The DEPUTY PRESIDENT—I present the Register of Senate Senior Executive Officers’ Interests incorporating statements of interests and notifications of alteration of interests lodged between 28 November 2003 and 18 June 2004.

COMMITTEES

Senators’ Interests Committee Report

Senator McGAURAN (Victoria) (3.36 p.m.)—At the request of the Chair of the Standing Committee of Senators’ Interests, and in accordance with the Senate resolution of 17 March 1994 on the declaration of sena-

TAX LAWS AMENDMENT (2004 MEASURES No. 3) BILL 2004

Report of Economics Legislation Committee

Senator McGAURAN (Victoria) (3.36 p.m.)—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the Tax Laws Amendment (2004 Measures No. 3) Bill 2004, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

COMMITTEES

Economics Legislation Committee

Additional Information

Senator McGAURAN (Victoria) (3.36 p.m.)—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I present additional information received by the committee on its inquiry into the Superannuation Budget Measures Bill 2004 and two related bills.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator McGAURAN (Victoria) (3.37 p.m.)—At the request of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present additional information received by the committee relating to hearings on the 2003-04 additional estimates.

DELEGATION REPORTS

Parliamentary Delegation to the 110th Inter-Parliamentary Union Assembly, Mexico City

Senator CHAPMAN (South Australia) (3.37 p.m.)—by leave—I present the report of the Australian parliamentary delegation to the 110th Inter-Parliamentary Union Assembly and Council and the Anzac Day ceremony in Mexico City, which took place from 15 to 25 April 2004. I seek leave to move a motion to take note of the document.

Leave granted.

Senator CHAPMAN—I move:

That the Senate take note of the document.

In view of the pressure of the business of the Senate, I seek leave to incorporate in Hansard my tabling speech.

Leave granted.

The statement read as follows—

As Senators will know, the IPU which was established in 1889, was the first permanent forum for political multilateral negotiations. The IPU now is the international organisation of the Parliaments of sovereign states. Its assemblies foster dialogue and parliamentary diplomacy among legislators. 140 countries are members of the IPU and over 120 countries send delegations to the IPU assemblies.

The IPU has six core areas of activity and these are:

• The promotion of representative democracy;
• International peace and security;
• Sustainable development;
• Education, science and culture;
• Human rights and humanitarian law; and
• Women in politics

The IPU addresses these and other issues primarily through its three standing committees. These committees debate issues of international significance, appoint drafting committees that sit for many hours formulating draft resolutions which
are in turn considered and adopted by the plenary session of the IPU.

The Australian delegation always makes a strong contribution to the work of the IPU committees—this is perhaps not surprising given our considerable experience with committees in this parliament. It is interesting to note that over the last three years, the IPU has referred about fourteen matters to drafting committees and Australia has been elected to eight of them and has chaired three. I don’t think many countries could match this level of participation.

In Mexico City, delegates attended and participated in the work of the three committees. Additionally, Ms Maria Vamvakiniou, the Member for Calwell, did outstanding work when she was elected to the drafting committee on an emergency agenda item on the situation in Israel and Palestine that was added to the IPU’s agenda.

It should also be noted that Senator Ferris was elected to the co-ordinating committee of women parliamentarians and that I was elected as a Vice President of the IPU’s Second Committee which covers Sustainable Development, Finance and Trade. My work on the newly constituted Board of the Inter-Parliamentary Foundation for Democracy also continued.

Following the IPU, the delegation participated in the ANZAC day ceremony at the Australian Embassy in Mexico City. The delegation laid a wreath at that ceremony, as did the New Zealand IPU delegation and Mr Sciacca, a member of our delegation and a former Minister for Veterans’ Affairs gave a very appropriate and moving address to the 150 or so people who attended the ceremony.

My special thanks go to the Australian Ambassador in Mexico, Graeme Wilson, his wife, Lisa Mantell and his staff, especially Peter Rennert and Chris Munn. The hospitality they offered was welcome; the assistance they provided was highly professional.

Similarly the assistance of Neil Bessell, Secretary to the Delegation and newly-appointed Department of Foreign Affairs and Trade Adviser to the delegation, Doug Foskett, was invaluable.

My thanks also to my wife, Sally, who ensured that the regular strategy meetings of the delegation were well catered.

Senator CHAPMAN—In addition to that, may I also indicate that as part of this Inter-Parliamentary Union conference there was a very challenging panel discussion held on the commercial sexual exploitation of children, which the Australian delegation attended as part of the IPU conference. Two of our delegates in the delegation of four, the member for Calwell and Senator Ferris, have previously circulated to our parliamentary colleagues papers arising from this particular panel. I also seek leave, on behalf of the delegation, to table the papers that relate to that panel and also a handbook for parliamentarians entitled Child Protection, which has been produced jointly by the Inter-Parliamentary Union and UNICEF.

Leave granted.

Question agreed to.

Parliamentary Delegation to the 12th Annual Meeting of the Asia Pacific Parliamentary Forum, Beijing, People’s Republic of China

Senator McGAURAN (Victoria) (3.39 p.m.)—by leave—I present the report of the Australian parliamentary delegation to the 12th annual meeting of the Asia Pacific Parliamentary Forum in Beijing, People’s Republic of China, which took place from 12 to 14 January 2004. I seek leave to move a motion to take note of the document.

Leave granted.

Senator McGAURAN—I move:

That the Senate take note of the document.

I seek leave to incorporate the tabling statement in Hansard.

Leave granted.

The statement read as follows—

CHAMBER
I present the report of the Australian parliamentary delegation to the 12th annual meeting of the Asia Pacific Parliamentary Forum held in Beijing. The Asia Pacific Parliamentary Forum—the APPF—is an organisation which, each January, brings together members of Parliaments from throughout the Asia Pacific Region. Delegates discuss matters of mutual interest as set out in an agreed agenda. Formal resolutions are adopted on the agenda items and the report provides the text of these 25 resolutions.

Australia has been an active participant in the Forum since it was established in 1993 and many Senators and Members have now attended the annual meetings. We were fortunate this time in that all four delegates—myself, the delegation leader Mr Jull, the Member for Oxley, Mr Ripoll and the Member for Stirling, Ms McFarlane—were seasoned APPF delegates. This provided us with an understanding of the rules and practices of the forum which allowed us to make a sound contribution to a number of aspects of the meeting.

The subject matter of the forum included political and security issues, economic issues, an agenda item called “cooperation for the stability and prosperity of the region” and the future work of the APPF.

Australia prepared four draft resolutions covering

• the political and security situation in the region
• combating international terrorism
• protection of the Pacific Ocean’s biomass including relevant multilateral agreements and
• cooperation on the prevention and treatment of infectious diseases.

All our drafts were eventually adopted following negotiations and amendments suggested by other countries, three of them being jointly sponsored with other delegations.

The item entitled “future of the APPF” was a particularly significant one at this meeting. After thirteen years service to the APPF, His Excellency Yasuhiro Nakasone resigned as President—following his retirement as a member of the Japanese House of Representatives. Mr Nakasone, a former Prime Minister of Japan and the founding President of the APPF, leaves a great legacy.

He was honoured by a unanimous decision to invite him to continue his association with the APPF by becoming Honorary Chairman. In this role he will advise the Executive Committee and provide continuity and leadership into the future.

On behalf of this delegation and previous Australian delegations to the APPF, I would like to place on record our gratitude to Mr Nakasone for the great contribution he has made to the Forum. We wish him well for the future.

The search for a replacement APPF President failed to identify a candidate who would agree to take on the role for the three years provided for in the APPF rules. Accordingly, the rules were altered to provide for a rotating President. For the future, the host parliament of the next annual meeting will nominate both a President and a Chairman of the annual meeting, to serve for a year. The Parliament of Vietnam will provide the first annual President.

The APPF provides an important opportunity for Australian parliamentarians to press Australia’s interests. This is done formally through our draft resolutions. We also promote Australia’s national interests during speeches in the plenary and in bilateral meetings with other delegations. In addition, APPF delegations have the opportunity to encourage other parliamentarians in our region to understand Australian policies and priorities through the numerous informal occasions which arise throughout the meeting.

In relation to activities other than those which took place in the plenary session, I would like to particularly mention the role played by the Member for Stirling in her leadership of the Technological Working Group. This is the second year in a row that Jann McFarlane has chaired the group, taking over the role from the Member for Oxley—Bernie Ripoll. The Beijing meeting of the Technological Working Group was significant for preparing and having adopted by the plenary, a statement of its aims and objectives. The work done by the group in keeping a watching brief on the APPF website will be most valuable in the future because in the absence of a permanent secretariat, the website is the contact point for information on the APPF.
Delegation leaders met privately with President Hu. The President told Mr Jull that he was overwhelmed by the hospitality he received during his visit to Australia last October, particularly from Senators and Members following his address to them. He was very optimistic about future relations between China and Australia.

The Australian delegation enjoyed a successful bilateral meeting with the Indonesian delegation. These meetings have become a feature of APPF meetings and the opportunity to have a frank discussion with our near neighbours is much valued by both delegations.

The delegation wishes to thank the organisers of the meeting, especially His Excellency Wu Bangguo, Chairman of the Standing Committee of the National People’s Congress, Mr Lu Congmin, Chairman of the Organising Committee of the meeting and all the staff who did an excellent job of organisation.

We also thank those who supported the delegation in practical and policy advice matters including staff from the Parliamentary Library and the Department of Foreign Affairs and Trade. Our particular thanks go to Larissa Ashwin from the post in Beijing who helped us in matters practical and diplomatic. Ms Brenda Herd from the Parliamentary Relations Office was characteristically efficient and helpful and we thank her also.

Finally, I would like to thank the leader of the delegation, Mr Jull and my fellow delegates. We worked together as an effective team to represent and promote Australia’s interests.

Question agreed to.

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

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

- **APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 1) 2004-2005**
- **APPROPRIATION BILL (No. 1) 2004-2005**
- **APPROPRIATION BILL (No. 2) 2004-2005**
- **APPROPRIATION BILL (No. 5) 2003-2004**
- **APPROPRIATION BILL (No. 6) 2003-2004**
- **EXCISE AND OTHER LEGISLATION AMENDMENT (COMPLIANCE MEASURES) BILL 2004**
- **VETERANS’ ENTITLEMENTS AMENDMENT (DIRECT DEDUCTIONS AND OTHER MEASURES) BILL 2004**
- **TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT (STORED COMMUNICATIONS) BILL 2004**

First Reading

Bills received from the House of Representatives.

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads) (3.41 p.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads) (3.42 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—
The purpose of the Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005 is to provide funding for the operations of the three Parliamentary Departments.

The total amount sought is $178.7 million. Details of the proposed expenditure are set out in the Schedule to the Bill.

I commend the Bill to the Senate.

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APPROPRIATION BILL (No. 1) 2004-2005

It is with great pleasure that I introduce Appropriation Bill (No. 1) 2004-2005, which, together with Appropriation Bill (No.2) 2004-2005, is one of the principal pieces of legislation underpinning the third Budget of the third term of the Coalition Government.

Appropriation Bill (No. 1) 2004-2005 provides authority for meeting expenses on the ordinary annual services of Government.

This Bill seeks appropriations out of the Consolidated Revenue Fund totalling $45,060 million. Details of the proposed appropriations are set out in Schedule 1 to the Bill, the main features of which were outlined in the Treasurer’s Budget speech on 11 May.

I commend the Bill to the Senate.

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APPROPRIATION BILL (No. 2) 2004-2005

It is with great pleasure that I introduce Appropriation Bill (No. 2) 2004-2005.

Appropriation Bill (No. 2) 2004-2005 provides funding for agencies to meet:

- expenses in relation to grants to the States under section 96 of the Constitution and for payments to the Northern Territory and the Australian Capital Territory;
- administered expenses for new outcomes;
- requirements for departmental equity injections, loans and previous years’ outputs; and
- requirements to create or acquire administered assets and to discharge administered liabilities.

Appropriations totalling $5,187.5 million are sought in Appropriation Bill (No. 2) 2004-2005. Details of the proposed appropriations are set out in Schedule 2 to the Bill, the main features of which were outlined in the Treasurer’s Budget speech on 11 May.

I commend the Bill to the Senate.

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APPROPRIATION BILL (No. 5) 2003-2004

It is with great pleasure that I introduce Appropriation Bill (No. 5) 2003-2004.

There are two supplementary Additional Estimates Bills this year: Appropriation Bill (No. 5), and Appropriation Bill (No. 6). I shall introduce the latter Bill shortly.

The Supplementary Additional Estimates Bills follow on from the Additional Estimates Bills that were introduced during the Spring sittings. They seek authority from Parliament for the supplementary appropriation of monies from the Consolidated Revenue Fund during the current financial year.

The monies sought are for important initiatives that can be accommodated within the current financial year due to the strength of our fiscal position and the Australian economy.

The total appropriation being sought through these Bills is some $783.1 million, with around $603.8 million being sought in Appropriation Bill (No. 5).

The most significant amount proposed in that Bill is a grant payment of $450 million to Australian Rail Track Corporation for investment in new rail infrastructure projects on the interstate rail system, including improvements and rail realignments on parts of the New South Wales—North Coast line to Brisbane. The balance of around $153.8 million is for a number of specific programmes, including $10 million in assistance to Lifeline and a $600,000 contribution towards the Athens 2004 Paralympic Games.

I commend the bill to the Senate.

———

APPROPRIATION BILL (No. 6) 2003-2004

Appropriation Bill (No. 6) provides additional funding for agencies for:
• expenses in relation to grants to the States under section 96 of the Constitution and for payments to the Northern Territory and the Australian Capital Territory; and
• non-operating purposes in the form of an administered assets and liabilities appropriation.

The total additional appropriation being sought in Appropriation Bill (No. 6) 2003-2004 is around $183.3 million. This comprises $57.6 million in additional payments to the States and Territories and $125.7 million to the Department of Health and Ageing by way of an administered assets and liabilities appropriation with a number of measures to combat avian flu.

I commend the Bill to the Senate.

———

EXCISE AND OTHER LEGISLATION AMENDMENT (COMPLIANCE MEASURES) BILL 2004

This bill amends the Excise Act 1901 to improve compliance and administration arrangements.

The ATO is responsible for the high level of risk management required to protect the revenue and the excise legislation provides considerable controls to enable the ATO to ensure compliance with the law.

Diversion of goods delivered for exportation is a significant risk for excise revenue. However, movement of excisable goods for exportation may occur under the existing provisions without permission of the ATO. Accordingly, the ATO is unable to apply to these goods the usual compliance and revenue protection measures that it is able to apply to all other movement of excisable goods.

The amendments in the bill ensure that ATO permission is required for delivery of excisable goods for exportation. The bill extends to the exportation of excisable goods the provisions that enable the duty equivalent to be called up where a person entrusted with excisable goods fails to keep the goods safely or cannot satisfactorily account for them.

Under this bill current provisions that regulate the movement of tobacco leaf will be extended to tobacco seed and plant and permissions relating to movement of these goods for exportation will be required.

This bill also extends the criteria that enable immediate destruction of seized forfeited goods. Currently goods must be perishable and a danger to public health. However, in most cases seized excisable goods and tobacco seed, plant or leaf do not satisfy both the perishable and danger to public health criteria. The seized goods may be perishable only without special storage arrangements, or may not be perishable but do not meet any relevant standards that would enable them to be returned to the market.

The amendments enable seized goods to be destroyed immediately where they are perishable or a danger to public health or safety or do not meet any applicable standards. The amendments provide for the use of evidentiary certificates in proceedings relating to those goods and extend the compensation provisions to include where the Court is satisfied the grounds for disposing of the goods did not exist.

Finally, the bill amends the confidentiality provisions of the Excise Act to enable information about licences, permissions and remission of duty arrangements to be made available to a second person dealing with, or proposing to deal with, the goods covered by the licence, permission or remission documents.

The present confidentiality provisions prevent such information from being disclosed to a second person dealing with the goods. However, this information is at times a prerequisite for a second person to comply with the law. The amendments enable the information relating to licences, permissions and remission arrangements to be made available to a second person where it is considered necessary to ensure compliance with the excise legislation.

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

I commend the bill.
VETERANS’ ENTITLEMENTS AMENDMENT (DIRECT DEDUCTIONS AND OTHER MEASURES) BILL 2004

This Bill gives effect to a number of minor policy measures that will enhance services to veterans and their dependants, continuing this Government’s commitment to improving the repatriation system to ensure it operates as effectively as possible in meeting the needs of the Australian veteran community.

Notably, amendments in this legislation will:

- enable recipients of the veteran disability pension and war widow’s/widower’s pension to arrange direct deduction payments;
- increase the Victoria Cross allowance and commence indexation of this special benefit by the Consumer Price Index;
- introduce automatic eligibility for the war widow’s/widower’s income support supplement to partners who received their social security age pension or wife pension through the Department of Veterans’ Affairs; and
- ensure eligibility for the partner service pension includes certain partners of veterans living on Norfolk Island.

Other amendments will correct minor policy flaws in relation to the calculation of disability pension arrears and rent assistance, and the recovery of certain overpayments. Parts of this Bill will also align the Veterans’ Entitlements Act 1986 with social security law in relation to the deeming of certain income and assets, the income and assets treatment of superannuation benefits and compensation recovery provisions.

Currently, direct deduction arrangements are available for recipients of the service pension or the war widow’s/widower’s income support supplement. Such arrangements allow veterans and war widows/widowers to have deductions made from their benefits for regular payments such as rent to State housing authorities.

These arrangements are not currently available for disability pensions or war widow’s/widower’s pension. This Bill will extend the direct deduction provisions to allow these pensioners to arrange such deductions from their fortnightly payments.

This Bill will enhance the allowance paid to our two surviving recipients of the Victoria Cross. The Victoria Cross allowance is currently $2808 per year and is paid annually in advance. Under these amendments, the allowance will be increased by 15 per cent to $3230 per year, and it will be subject to annual indexation in line with movements in the Consumer Price Index. These amendments reflect changes in the allowance provided to British VC recipients by the British Government and recognise the special place held by Australia’s Victoria Cross winners. The amendments will also make minor reforms to the provisions for decoration allowance.

Amendments in this bill will enhance support for veterans’ partners who received the social security age pension or wife pension through my Department.

On the death of a veteran, where the veteran’s death is accepted as being related to their service, the partner becomes eligible for the war widow’s/widower’s pension. However, they currently are required to lodge a formal claim to receive the war widow/widower’s income support supplement.

This Bill will provide automatic eligibility for partners in these circumstances to receive the income support supplement, removing an administrative burden from widows/widowers coming to terms with the loss of their partner.

In a further measure of support for veterans’ partners, the Bill will ensure eligibility for the partner service pension includes certain partners who are resident in Norfolk Island. These amendments correct an anomaly in the provisions that meant certain partners resident in Norfolk Island were not eligible for the partner service pension.

Many of these amendments represent relatively small changes to our repatriation legislation. However, this “fine-tuning” of the Veterans’ Entitlements Act is important to those members of the veteran community who will benefit from these changes, and the Government sees this legislation as continuing to deliver on its commitment to those who serve in the defence of our nation.
TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT (STORED COMMUNICATIONS) BILL 2004

This Bill amends the Telecommunications (Interception) Act 1979.

These amendments address the practical implications of modern technology on access to communications by law enforcement and regulatory agencies.

The Bill will exclude access to stored communications from the current prohibition against interception of communications.

In practical terms, the amendments will limit the existing prohibition against interception to real time transit of communications.

Communications that have been stored on equipment will be excluded from the scope of the Act.

These measures represent immediate and practical steps to address the operational issues faced by our law enforcement and regulatory agencies.

However, the amendments also recognise the need for more comprehensive review of access to stored communications and the contemporary relevance of Australia's interception regime.

That is why the amendments will cease to have effect 12 months after their commencement.

The Government recognises that broader review of access to modern means of communication is required.

That is why I have asked my Department to conduct a comprehensive review of the Telecommunications Interception Act, to report back to me before the expiration of these amendments.

The need for more comprehensive review should not preclude the enactment of amendments to addressing the increasingly significant operational concerns created by the Act’s current application.

These amendments appropriately respond to the immediate difficulties posed by the breadth of the existing interception regime, while recognising the need to revisit this issue in greater detail.

The Government has on two previous occasions, in 2002 and 2004, sought to legislate to clarify the application of the Interception Act to stored communications.

On both occasions, the Government has withdrawn the amendments.

Most recently, the Government withdrew the amendments following a recommendation of the Senate Legal and Constitutional Legislation Committee.

The Committee, after considering the proposed amendments in relation to stored communications, recommended that they be deferred pending resolution of differing interpretations of the current operation of the interception regime.

The amendments now proposed address concerns expressed by the AFP in relation to operational difficulties posed by the current interception regime in the consideration of those most recent amendments.

The amendments represent measures to address operational concerns raised by the AFP in relation to access to stored communications.

As I have previously said, I have agreed that my Department conduct a broader review of the telecommunications interception regime.

The review will likely focus as a key issue on access to electronic communications.

In the meantime, it is important that any lack of clarity in applying the Interception Act to stored communications be resolved.

The measures in the Bill are an urgent but temporary solution to operational difficulties experienced by law enforcement agencies.

When the Act was drafted almost 25 years ago, the Australian telecommunications systems consisted largely of land based services carrying live telephone conversations.

The Act was therefore built around a core concept of communications passing over a telecommunications system.

While this concept is technologically neutral, its application has proven more difficult to modern telecommunications services such as voicemail, email and SMS messaging.

These amendments do not however allow unregulated monitoring of telecommunications services, such as e-mail, voice mail and SMS, which are in widespread use in the community.
Rather, the amendments recognise that such communications become stored, and should fall outside of the protections originally designed for more immediate voice telephony at some point. Access to stored communications will continue to require an appropriate form of lawful access, such as consent, search warrant or other right of access to the communication or storage equipment.

The amendments will allow law enforcement and regulatory agencies expeditious access to stored communications in the performance of their functions.

The amendments will also facilitate measures to preserve the security of information systems by allowing access to stored communications.

The amendments also ensure that new technologies that may involve storage, but which are in reality analogous to standard voice telephony, are protected in the same way as normal voice calls. In particular, the amendments specifically exclude storage in the course of transmission by voice over Internet protocol, and other highly transitory storage that is integral to the carriage of a communication.

This ensures that these communications, although technically stored for a fraction of a second, remain protected as live communications.

The Government is, as it has previously indicated in amending this Act, committed to ensuring that the interception regime keeps pace with technological developments.

It is now time to recognise that modern means of technology are converging with more traditional data storage.

These amendments address the operational impacts of that convergence, while foreshadowing the need for further consideration of this issue.

Debate (on motion by Senator Ludwig) adjourned.

Ordered that the Excise and Other Legislation Amendment (Compliance Measures) Bill 2004, the Veterans’ Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004 and the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004 be listed on the Notice Paper as separate orders of the day.

**TRADE PRACTICES AMENDMENT (PERSONAL INJURIES AND DEATH) BILL (No. 2) 2004**

**Consideration of House of Representatives Message**

Message received from the House of Representatives returning the Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 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 consideration of the message in Committee of the Whole be made an order of the day for a later hour.

**SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF SUPERANNUATION FUNDS) BILL 2003**

**Second Reading**

Debate resumed.

*(Quorum formed)*

**Senator HOGG** (Queensland) (3.46 p.m.)—Prior to question time I was speaking on the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003 about the issue of literacy and the difficulties that many people will face when it comes to choice of funds, given that they do not have the required literacy and numeracy skills to be able to read the type of key feature statements that will be presented to them. In many instances they will be forced by some very slick operators into making quite unwise choices about the thing that is most important to them—their retirement benefit, which will give them dignity in retirement. None of what I have heard the government or the Democrats say in coming to an agreement on this bill has overcome that
major difficulty. One of the major difficulties that face this bill is the fact that many people do not know how to cope with the information that they will be bombarded with in seeking to move from the fund that they are in to another fund. Whilst choice might seem all well and good in theory, the practical reality for some people will be that they will have a great deal of difficulty in dealing with it.

One would say that there is an option for them to do nothing. That is quite true, but in some instances they will be presented with a very slick salesperson who will do their utmost to sway them out of the fund that they are in into an inferior product where there could well be higher charges, and the person will be none the wiser. It may take them some substantial period of time to discover the error of their ways. However, though, that may well be too late in some instances because they may be close to retirement and the accrual that they could otherwise have earned out of a sound fund will have dissipated in their case. There are real concerns also that a number of slick salespersons will hop into this area and avail themselves of the opportunity to take down people who are most vulnerable. Until the government really had addressed that issue, they should not have proceeded with this legislation. Whilst it was always going to suit those who are skilled in the area of investment, those who do not have the skills are going to be the people who suffer the most.

I am sure that my colleague Senator Sherry will deal with this at length when it gets into the committee stage. Undoubtedly, it is not a good deal for a number of people in the Australian work force where their funds have been fairly well protected up to date. They will now be exposed to the prospect that their superannuation could be dissipated by dodgy funds and dodgy investment practices to boot. I believe that I have said enough on this bill, and the sooner it gets to the committee stage the better.

Senator BROWN (Tasmania) (3.50 p.m.)—The Australian Greens will not be supporting the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003 for the reasons that have been outlined very clearly by previous speakers. We would have been happier to get from the government better consumer protection in such things as the cost of getting into new funds, the return when the person making the payments is in the funds and the cost of an exit fee, if they are unhappy. All of these things should be easily quantifiable to the consumer.

The Greens will be supporting many of the amendments that Labor brings forward, but we recognise the weight of numbers as the government and the Democrats will be able to get the bill safely through. The Greens were very happy to look at choice and consumer safeguards. However, the Democrats have been able to negotiate with the government to come to an arrangement they think is satisfactory. We do not believe that that is the case. A lot of people without great riches may well get their savings purloined by organisations which have multimillion dollar budgets, for example, simply to advertise their wares in the retail sector—funds which ought to have been going back to the consumer in their retirement.

These things worry us a great deal. We are in favour of choice but we believe consumers cannot exercise that choice unless it is presented simply. We believe it is up to government to find the prescription that makes it easy for consumers to know what is best for them in the jungle of competing concerns in this huge and very lucrative business. We also believe that, for instance when it comes to ethical investment, consumers should be guided and know that they are being safely
guided by the information they get. There should be a choice for people not to invest in funds that are wood chipping Tasmania’s forests, that are mining for uranium in Kakadu or that are involved in the live animal export trade or in genetically modified crops, for example. Those things are very important, and they are going to become increasingly important. However, we foresee that this legislation will be back in this parliament in a few years time with some pretty sad stories to go with it—and they will have been unnecessary.

It is up to the parliament to protect the consumer, and one of the best ways of protecting the consumer is to ensure that information is simple and trustworthy. That is not spelt out in this legislation; therefore it is unsatisfactory. We can understand why the Australian Consumers Association believes that better legislation should have been forthcoming. When it comes to ending the discrimination against same-sex couples or people living in another form of arrangement of dependency, we are totally in favour of that part of the legislation and we will be supporting the amendments to the legislation that will bring that into being.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (3.53 p.m.)—It gives me great pleasure to sum up on behalf of the government on this very important, indeed, landmark Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003 that provides for choice of superannuation. The government have been committed to the idea that workers should be able to decide where their superannuation goes since, as I understand it, the mid-1990s. Choice of fund was an election commitment of the government in 1996. We believe that it is an unassailable proposition and indeed a fundamental democratic right that people should have a say in how their own money is managed. This is a right that has been denied to employees for far too long, with seriously adverse consequences for workers. But choice is about more than workers’ rights; it is also about good retirement incomes policy. It is about creating a competitive environment that ensures superannuation providers are working as hard as possible for the retirement incomes of all Australians.

Choice is sound policy and this is a good bill. In summary, it gives people the basic right to control their own superannuation. It will encourage employees to take a greater interest in their retirement savings. It will promote competition and place downward pressure on fees and charges. It minimises the costs on employers. It comes into effect after the introduction of a robust, comprehensive and world-class consumer protection regime. It will come into effect after the introduction of a new fee comparison model that will assist people to shop around. It is vitally important that employees are involved in decisions that affect their super. Choice of fund not only will empower workers to make decisions but it will also allow them to have a better connection with their superannuation savings. Lack of choice cements the current set and forget mentality and the general apathy that many Australians have towards their retirement savings and goals.

One of the biggest winners from choice will be part-time and casual workers and those working multiple jobs. Many of these people are low-income workers in Labor heartlands who seem to have been forgotten by the Labor Party. Choice will allow those working multiple jobs to consolidate their super into one account and avoid paying multiple account fees, which can devastate and completely eat away retirement savings. Choice is expected to lead to a genuine increase in retirement incomes for such people. I lost count a long time ago of the number of letters I have received from workers locked
into underperforming or expensive funds, pleading for the right to be able to change funds. Many workers are provided with a choice but, for those who are not, it can result in a grave disadvantage because they are shut into a one size fits all model and they are really, in many ways, shut out from the process of saving for their own retirement. It is no coincidence that there are currently $7 billion and 4.6 million accounts on the Australian tax office’s lost members register. There is a serious disconnect between workers and their money.

The choice of fund initiative will be supported by a substantial education campaign. The government committed long ago to $14 million for the ATO to run such a campaign. Contrary to the dire warnings from naysayers, the campaign will be responsible. Subject to the views of an independent advisory committee, the campaign will encourage employees to take an interest in what is being offered, as different options, of course, suit different people. It will make it clear that there is no need to change funds and that a person’s best option may be to stay where they are. That would be the choice. I will be moving amendments to the legislation later in the debate. These amendments will broaden the range of people eligible to receive superannuation death benefits and will provide greater certainty to people in interdependent relationships. The amendments will specify that employers must pay superannuation contributions to a fund that offers life insurance if employees do not exercise choice. The amendments will also prohibit superannuation funds from providing kickbacks or benefits to an employer or union on the basis that one or more of their employees are members of the super fund.

I do warmly welcome and commend the Democrats’ support of choice, and I particularly thank Senator Cherry for his efforts. I am sure that the Democrats recognise that this bill is, overall, good for Australian workers. I think it is disappointing that, despite many years of debate about this matter, Labor’s position on choice does not seem to have moved very much. Let me start with Labor’s first major furphy, that choice is unsafe, and just look at the facts. I think the facts are pretty straightforward. Choice has been operating successfully in Western Australia since 1998. ASFA estimates that 32 per cent of Australians already have choice; this equates to millions of Australians who already have choice. So where is the evidence of unsafe practices? I do not think Labor has produced one iota of evidence. There is a fundamental contradiction to the arguments of the Labor Party that choice is unsafe, when so many people can already choose and the sky has certainly not fallen in.

Despite this fearmongering, I firmly believe that overseas experiences in the United Kingdom and Chile will not be repeated in Australia. The reason I believe this is that we have been mindful of those very unhappy practices and events and have done something to prevent them. First, Australia has a robust and comprehensive consumer protection regime that is world’s best practice; second, Australia has an experienced and active consumer protection regulator in ASIC; third, super funds are heavily regulated under the SIS Act; and, finally, millions of Australians, as I have said, already have choice and there is no evidence of this type of behaviour.

It is difficult to understand how Labor can continue to oppose a fundamental right and a policy that will substantially boost retirement incomes on such flimsy, lightweight and unsubstantiated evidence. If you extend the unsafe argument, Labor would deny Australians the right to choose their bank account or home loan or indeed health cover. Labor clearly think Australians are either too uninformed, too stupid or too inexperienced to be
trusted to make decisions for themselves. They would rather employers make these decisions for us. Australians should never accept such policy in respect of their banking or home loan and they certainly should not accept it in relation to their superannuation.

Labor speaks of risk and Labor speakers have spoken of risk in the second reading debate, but what about the countervailing risks? No-one has said a word about the risk of leaving employees in underperforming funds or funds that simply do not suit their particular needs. What about the risk that superannuation funds will become complacent if members cannot leave? What about the risk to retirement incomes of forcing people to maintain multiple accounts? I think that Labor’s approach to this ignores these risks. I think there is a worrying authoritarian streak creeping into the Labor Party’s approach to policy not only in respect of superannuation but even in respect of kids doing homework. Labor wish to deny Australians the basic right of self-determination. They oppose good policy on the basis of flawed logic and unsubstantiated arguments.

Labor has talked about complexity. Those in the Labor Party would know a great deal about complexity because what Labor has said about superannuation policy appears to be littered in red tape, regulation, complexity and prescription. The choice bill is relatively straightforward. Affected employers give their employees a standard choice form produced by the ATO. If employees want to make a choice, they provide the relevant details to their employer. This is really not rocket science.

Another furphy is that choice is an attack on industry funds. I do not see any evidence of that; in fact, it is quite the opposite. I refer to the evidence given by industry fund Cbus to the Senate committee in 2002. Cbus acknowledged that choice in Western Australia had led to an increase in their own membership. I also note comments by REST Chief Executive, Neil Cochrane, in March this year that super choice would result in more people moving to industry funds. In a more competitive market, industry funds may well be the winners. Again I think the Labor Party has used both flimsy and unsubstantiated arguments that simply do not amount to real evidence.

We do know of course that on the odd occasion when the guard is let down even those opposite have occasionally supported choice. I actually came across a comment by Senator Conroy to the Senate on 24 March this year, when he said:

The choice of a superannuation fund is one of the most important investment decisions that any Australian will make.

I wholeheartedly endorse that comment. Senator Conroy acknowledges the importance of choosing a super fund, and I would hope that he would stand up to his caucus and support the government’s legislation and allow Australian workers to take what he recognises as a very important decision.

There has been a lot of talk about disclosure. The government recently announced a single fee-comparison model. It contains a single figure that consumers can use to compare funds. What is the Labor Party’s alternative to this? It appears to be complex projections over a number of years that would add pages to disclosure documentation and be likely to confuse and mislead rather than being simple. Sixty to 80 pages is overwhelming, but about four different projections would add even more detail. You do not need a projection to identify the cheapest fund; you only need a simple fee-comparison table. It is one-page long and it is simple, as Senator Cherry said. That is what was aimed for and that is what we ended up with.
The irony of Labor’s position is that they claim to favour disclosure and want people to know the fees they pay, but they will not let consumers do anything about it. We do need to tell Australians about the fees they pay. Some Australians, unfortunately, are in high-cost funds. We need to take every step to highlight this point. Australians should be equipped with the ability to do something about this and to understand it. It is a recipe for maximum frustration to have choice but no ability to understand what you are choosing between.

Exit fees have been put up as a barrier to choice, but once again it is a bit of a straw man. Exit fees are not the barrier to choice. The only barrier to choice is, indeed, opposition in this place. Labor wants to ban entry and exit fees. For some time industry has advised that high exit fee products are no longer marketed on current superannuation products. It is true that high exit fee products were prevalent during Labor’s watch in the 1980s and 1990s and those people who suffer high exit fees on old life insurance products not only deserve some sympathy but can thank previous Labor inaction for the fact that that is what they face.

Senator Sherry—They had been around for 40 years.

Senator COONAN—You did nothing about it, Senator Sherry. Banning exit fees will do nothing to lower overall fees. You do not have to be very perceptive to realise that, if you ban one kind of fee, funds will simply raise another fee to compensate. The approach to fees is akin to locking the window to keep the burglars out while leaving the back door open. Focusing on fees indicates a focus on the symptoms rather than the problem. The problem is a lack of competition and a superannuation environment that in some respects exhibits monopolistic characteristics, but high fees are a symptom—a symptom of inadequate competition. Those who suggest that if you regulate exit fees you fix the problem are really just looking at a symptom. The only effective way to reduce total fees is competition. The evidence is everywhere, and Labor knew this back in the 1980s and 1990s. For example, Labor introduced choice in the telecommunications markets. The result? Dramatically lower call costs.

I also refer to some comments on this issue by the now Labor leader, Mr Latham, who appears to acknowledge the great benefits of competition. I think it is worth recording Mr Latham’s comments on this. He said:

I have always believed in competition as the best way of motivating companies to upgrade their products, skill their workforce, move forward—you know, competition is the discipline, the driving force, to get productivity, and that is the essence of growth.

There aren’t too many lessons around the world if you wind back competition and go to monopoly that you end up with a growing economy.

Yet despite these comments, Labor, at least in the Senate, opposes procompetitive policies in the Australian superannuation sector in favour of what has been clearly demonstrated to be ineffective regulation and red tape. I think it demonstrates the hypocrisy of Labor’s position on choice that has been sustained at least since 1996.

Australians want choice. Australians deserve choice. The evidence against choice is flimsy and does not stack up to even half-baked scrutiny. The opposition to the government’s position on choice is based on scaremongering and mistruths and a blatant disregard for the retirement aspirations and outcomes of ordinary Australians and Australian workers. The opposition to choice is completely out of touch with the needs and desires of ordinary Australians. I believe that the Labor Party is out of step on this one.
am very pleased that the Democrats not only have seen the light but have worked very hard and diligently with the government to get to a position where we now offer a much improved bill and one that will meet the needs of Australians to be able to exercise choice. The legislation gives employees the basic right to be able to choose where their retirement savings are invested. It will improve the efficiency of the superannuation system and increase individuals’ connections with their retirement savings. I commend this important bill to the Senate.

Question put:

That the amendment (Senator Sherry’s) be agreed to.

The Senate divided. [4.14 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes…………. 29
Noes…………. 40
Majority…….. 11

AYES


NOES


PAIRS

Denman, K.J. Evans, C.V. Faulkner, J.P. Tierney, J.W. Harris, L.

* denotes teller

Question negatived.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Minister, I understand that government amendments on sheet PY263 supersede the government amendments on sheet PY262. Is that correct?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.18 p.m.)—I confirm that the amendments that we wish to move are on PY263 and that they do supersede those on PY262.

Senator SHERRY (Tasmania) (4.18 p.m.)—Mr Temporary Chairman, I wish to clarify this. We have circulated three amendments for consideration by the committee as a whole. I know they have only been circulated in the last 10 minutes. Do we have a running sheet? Will that be necessary?

The TEMPORARY CHAIRMAN—There is no conflict there, Senator Sherry.
Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.19 p.m.)—by leave—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 22 June 2004. I move government amendments (1) to (5) on sheet PY263:

(1) Clause 2, page 1 (lines 16 and 17), omit the clause, substitute:

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Commencement information</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
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</thead>
<tbody>
<tr>
<td>Provision(s)</td>
<td>Commence-</td>
<td>Date/Details</td>
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<tr>
<td>1. Sections 1 to 3 and any-</td>
<td>The day on which this Act receives the Royal Assent.</td>
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<td>thing in this Act not else-</td>
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<td>where covered by this table</td>
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<tr>
<td>2. Schedule 1</td>
<td>1 July 2005.</td>
<td>1 July 2005</td>
<td></td>
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<tr>
<td>3. Schedule 2</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
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</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

(2) Schedule 1, item 22, page 14 (lines 17 and 18), omit paragraphs 32C(2)(a) and (b), substitute:

(a) there is no chosen fund for the employee; and
(b) the fund is an eligible choice fund for the employer; and
(c) the fund complies with the requirements (if any) set out in the regulations in relation to offering insurance in respect of death.

(3) Schedule 1, item 22, page 20 (after line 6), after subsection 32N(4), insert:

(5) An employer must also give a standard choice form to an employee if:

(a) the employer is making contributions, in accordance with subsection 32C(2), to a fund for the benefit of the employee; and
(b) the employer changes the fund to which the employer makes contributions, in accordance with that subsection, for the benefit of the employee.

The standard choice form must be given within 28 days after the change.

(4) Schedule 1, page 22 (after line 20), at the end of the Schedule, add:

Superannuation Industry (Supervision) Act 1993

23 At the end of Part 7

Add:

68A Conduct relating to fund membership

(1) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not:

(a) supply, or offer to supply, goods or services to a person; or
(b) supply, or offer to supply, goods or services to a person at a particular price; or
(c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;
on the condition that one or more of 
the employees of the person will be, 
or will apply or agree to be, members of 
the fund.

(2) However, subsection (1) does not apply 
in relation to a supply of a kind 
prescribed in the regulations for the 
purposes of this subsection.

(3) A trustee of a regulated superannuation 
fund, or an associate of a trustee of a 
regulated superannuation fund, must 
not refuse:

(a) to supply, or offer to supply, goods 
or services to a person; or
(b) to supply, or offer to supply, goods 
or services to a person at a particular 
price; or
(c) to give or allow, or offer to give or 
allow, a discount, allowance, rebate 
or credit in relation to the supply, or 
the proposed supply, of goods or 
services to a person; 
for the reason that one or more of the 
employees of the person are not, or 
have not applied or agreed to be, 
members of the fund.

(4) However, subsection (3) does not apply 
in relation to a supply of a kind 
prescribed in the regulations for the 
purposes of this subsection.

Civil liability

(5) If:

(a) a person (the offender) contravenes 
subsection (1) or (3); and
(b) another person (the victim) suffers 
loss or damage because of the 
contravention;

the victim may recover the amount 
of the loss or damage by action 
against the offender.

(6) The action must be begun within 6 
years after the day on which the cause 
of action arose.

(7) This section does not affect any 
liability that the offender or another 
person has under any other provision of 
this Act or under any other law.

(5) Page 22 (after line 21), at the end of the bill, add: 

Schedule 2—Extension of definition of 
dependant

Income Tax Assessment Act 1936

1 Subsection 27A(1) (definition of 
dependant)

Repeal the definition, substitute:

dependant, in relation to a person (the 
first person), includes:

(a) in subparagraph (3)(a)(ii), sub-
sections (5), (5C) and (7) and 
paragraph (12)(a):

(i) any spouse or former spouse of 
the first person; and

(ii) any child of the first person; and

(b) in any other case:

(i) any spouse or former spouse of 
the first person; and

(ii) any child, aged less than 18 
years, of the first person; and

(iii) any person with whom the first 
person has an interdependency 
relationship.

2 Subsection 27A(1)

Insert:

interdependency relationship has the 
meaning given by section 27AAB.

3 After section 27AAA

Insert:

27AAB Interdependency relationship

(1) Subject to subsection (3), for the 
purposes of this Subdivision, 2 persons 
(whether or not related by family) have 
an interdependency relationship if:

(a) they have a close personal 
relationship; and

(b) they live together; and

(c) one or each of them provides the 
other with financial support; and
(d) one or each of them provides the other with domestic support and personal care.

(2) Subject to subsection (3), for the purposes of this Subdivision, if:
(a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and
(b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and
(c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability; they have an interdependency relationship.

(3) The regulations may specify:
(a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an interdependency relationship; and
(b) circumstances in which 2 persons have, or do not have, an interdependency relationship.

Retirement Savings Accounts Act 1997
4 Section 16
Insert:
interdependency relationship has the meaning given by section 20A.

5 Subsection 20(1)
Omit “and any child of the person”, substitute “of the person, any child of the person and any person with whom the person has an interdependency relationship”.

6 After section 20
Insert:
20A Interdependency relationship
(1) Subject to subsection (3), for the purposes of this Act, 2 persons (whether or not related by family) have an interdependency relationship if:
(a) they have a close personal relationship; and
(b) they live together; and
(c) one or each of them provides the other with financial support; and
(d) one or each of them provides the other with domestic support and personal care.

(2) Subject to subsection (3), for the purposes of this Act, if:
(a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and
(b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and
(c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability; they have an interdependency relationship.

(3) The regulations may specify:
(a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an interdependency relationship; and
(b) circumstances in which 2 persons have, or do not have, an interdependency relationship.

Superannuation Industry (Supervision) Act 1993
7 Subsection 10(1) (definition of dependant)
Omit “and any child of the person”, substitute “of the person, any child of the person and any person with whom the person has an interdependency relationship”.

8 Subsection 10(1)
Insert:
interdependency relationship has the meaning given by section 10A.
After section 10
Insert:

10A Interdependency relationship
(1) Subject to subsection (3), for the purposes of this Act, 2 persons (whether or not related by family) have an interdependency relationship if:
(a) they have a close personal relationship; and
(b) they live together; and
(c) one or each of them provides the other with financial support; and
(d) one or each of them provides the other with domestic support and personal care.

(2) Subject to subsection (3), for the purposes of this Act, if:
(a) 2 persons (whether or not related by family) satisfy the requirement of paragraph (1)(a); and
(b) they do not satisfy the other requirements of an interdependency relationship under subsection (1); and
(c) the reason they do not satisfy the other requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability;

Firstly, I want to deal with amendments (2) and (3) relating to choice of fund requirements. Where an employee does not choose a fund, an employer must choose an eligible choice fund into which to make contributions on behalf of that employee. The amendments will require the employer to choose an eligible choice fund that satisfies the requirements to offer life insurance, as prescribed in the regulations. An employer will have to provide a new standard choice form to their employees if they change the fund they contribute to on behalf of their employees.

Amendment (4), which relates to conduct relating to fund membership, inserts a new subsection into the Superannuation Industry (Supervision) Act 1993 to prohibit a trustee of a regulated superannuation fund or an associate of a trustee fund from providing or withholding benefits to a person on the basis that one or more of their employees is a member of the superannuation fund. That is the so-called kickback amendment. Amendments (1) and (5) relate to the extension of definition of dependant. Schedule 2 of the bill amends the definition of dependant in the Income Tax Assessment Act, the Superannuation Industry (Supervision) Act and the Retirement Savings Accounts Act to include people in an interdependency relationship. The amendments will prescribe that dependency will exist where two people have a close personal relationship, live together and where one or both provides financial support, domestic support and personal care. An exception is also provided so that where, due to a disability, people have a close personal relationship but are otherwise unable to meet the other criteria, they will still fall within the definition of a dependant. The government has in mind that, for instance, two peo-
ple could be injured in a motor vehicle acci-
dent and be so disabled as to be unable to
live together but otherwise retain a close per-
sonal relationship.

These amendments enable death benefit
superannuation payments to be received tax
free by a wider range of people. Regulations
will also be allowed to assist in the applica-
tion and interpretation of these provisions.
The reason for that is that it is simply impos-
sible to imagine every circumstance that may
arise, and regulations will allow some flexi-
bility to respond to instances that may arise.
These amendments commence on royal as-
sent. Item 1 of this schedule also amends the
definition of dependant in the Income Tax
Assessment Act to improve its readability.
This is just a stylistic change and does not of
itself change the meaning of the definition.

Senator SHERRY (Tasmania) (4.23
p.m.)—I have a number of specific ques-
tions, and I think this is the time to deal with
them. Firstly, I point out to the chamber and
to those who are listening that a second read-
ing amendment moved by the Labor Party
was just defeated. That amendment, if it had
been carried, would have required the estab-
ishment of a system whereby all fees,
charges and commissions payable on super-
anuation were reported to the regulator—in
this case the Australian Prudential Regula-
tion Authority, APRA, as it is known, is to
commence a new data series of information,
I understand, from 1 July and it is collecting
some data on the expenses of funds. How-
ever, my understanding from information
provided at Senate estimates is that it will
not include commissions. Commissions are,
at least on some superannuation products, an
important element. The Labor amendment
would have required, if it had been passed, a
report of all the fees, charges and commis-
sions—of which there are many different
types—to be reported to the regulator. Then
the regulator would have been required to
report in its data series all of the fees,
charges and commissions. We believe that in
a so-called choice environment the competi-
tion is supposed to thrive. The government
claims it will thrive. It is necessary to know
what is happening with all of the fees,
charges and commissions.

Secondly, for consumers to maximise the
opportunity to pick a fund, we were propos-
ing to require the publication every quarter
on the APRA web site the provider name—
and I think this is technically feasible as a
reporting requirement—together with the
reporting of all the fees, charges and com-
missions. That would be the name of the life
company or, in the case of retail funds, the
industry fund or the corporate fund. There
are thousands of funds. We were proposing
the reporting by the provider to APRA and
APRA putting up on their web site a record
of all fees, charges, expenses and commis-
sions so that if a consumer wished to see
what a particular fund was charging then
they could go to the APRA web site and see
the fees that were charged. We would be able
to see the fees that in real life were being
charged by these providers to the consumer.
We believe this would be of significant assist-
tance to the consumer. For those who are
eligible under this bill, it would provide an
additional element of price pressure.

Regrettably the amendment was defeated.
I read in press releases from the Minister for
Revenue and Assistant Treasurer and the
Australian Democrats that there is to be
some sort of mechanism for the reporting of
fees by funds to the regulator, but I do not
see it in the amendments, nor is it contained
in the original bill. I think the deal makers,
in this case the Australian Democrats and the
minister, should inform the committee about
what is to happen with the reporting of fees,
charges and commissions so we can track
their level over time and track what is ex-
actly happening with them.
Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.28 p.m.)—I can give a commitment on behalf of the government that the Commonwealth will collect and report information on the quantum of superannuation fees and charges. Details of which agency—that is, of which regulator: ASIC or APRA—should undertake this task are currently under consideration. There are arguments that it really should be ASIC, as the market regulator. On the other hand, APRA already does collect some data. We are currently examining which is the appropriate agency to undertake this task. We are also looking at, depending on which is the appropriate agency, whether they already have the power to do what we would be requiring—that is, to collect and report on the quantum of super fees and charges—and whether any legislative changes are required. That will be resolved as soon as possible. I should say in defence of the agreement with the Democrats—and in defence of the Democrats I am sure Senator Cherry will add to these comments—that that was accepted as something that was appropriate. The difficulty is in finetuning—working out which agency is appropriate and what legislative changes might be necessary. The precise content as to how we will require this will be resolved as soon as possible. There is a clear commitment that the government will undertake to do this.

Senator CHERRY (Queensland) (4.30 p.m.)—The Democrats strongly view it as essential that there be full and comprehensive monitoring of fees and charges over the next five years minimum to get an idea of exactly what is happening in the marketplace. I thank the minister for her commitment, which we discussed in the lead-up to this debate. I also seek an assurance that the legislative changes that would be required to ensure those fees are collected will be enacted as soon as possible after those matters are resolved.

I ask for a second commitment on the amendments in schedule 2, which deal with interdependency. I seek an assurance from the minister that the government will be proceeding to move those amendments into its statutory funds, in particular the public sector funds and so forth, and that she will be making contact with the relevant portfolio ministers to ensure that we get this provision into the overall law today and then shift it into the other schemes as quickly as possible.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.31 p.m.)—Yes, I am able to give a commitment in response to Senator Cherry’s question and to the committee that I will be asking my colleague ministers in other portfolios with responsibility for the Commonwealth superannuation schemes to review those to ensure consistency with these interdependency amendments. In fact, I can go a bit further and say that I already have letters on my desk awaiting signature, so in very short order letters will be sent to my colleagues to ask them to see whether or not the statutory schemes can be amended to achieve the same result as we are hopefully about to achieve here.

Senator SHERRY (Tasmania) (4.32 p.m.)—I want to remain with the issue of the reporting of fees and charges. Firstly, I am unclear about whether the assurance the minister has given includes commission payments. Secondly, I ask for an assurance from the minister that those fees will be publicly reported, whoever the regulator is. Thirdly—I suspect this is not going to happen—I ask for the establishment of a register so that we can actually see by individual provider what the fees, charges and commissions are. Obviously, we do not want the consumers’ names, where that is relevant, but to be able
to see from whoever the regulator collecting the data is which are the more expensive funds and which are the cheaper funds.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.33 p.m.)—I am not in a position to give that kind of particularity any content in response to Senator Sherry’s question. I would think, though, that the fees and charges would be publicly reported. Exactly what is publicly reported and how it is reported is something that will obviously be subject to discussion. I have to say that I am not in a position to be giving any unequivocal statements about the precise content, and I would not do so because I do not want to mislead the chamber. What I have unequivocally said is that we have a genuine commitment to ensure that we can devise the most appropriate way to disclose fees and charges and to have them properly reported, and to do it in a way that identifies the agency that can do it most appropriately.

In response to Senator Cherry I can say that we will be doing this as soon as possible; we will not be waiting until June next year if we can avoid it. I think this is a very important component in getting this legislation bedded down, but it is one where the actual content will need to be decided later.

Senator SHERRY (Tasmania) (4.34 p.m.)—I am concerned about that response. I wonder if the Australian Democrats could indicate to the chamber—whether or not they understand that the reporting mechanism is to include commissions on superannuation products.

Senator CHERRY (Queensland) (4.35 p.m.)—Senator Sherry would be well aware that ASIC has published a template of fees and charges that it believes need to be disclosed. That obviously includes commissions in all their various permutations. I will be advocating very strongly to the minister that the ASIC template should form the template for the reporting of fees and charges. The Democrats are of the firm view that it is essential that we keep maximum pressure on fees and charges, and the best way to do that is through proper monitoring, proper disclosure and making sure that consumers have an understanding of fees and charges. That is something that we have taken very seriously throughout these negotiations. Senator Sherry would be well aware of the extent of the work that ASIC has done in identifying the key fees and charges in the product disclosure templates. I imagine that would form a very reasonable basis for a reporting mechanism.

Senator SHERRY (Tasmania) (4.36 p.m.)—I certainly hope we see that. I am not 100 per cent assured by the response Senator Cherry has given. If commissions are omitted for any reason there will be a massive hole in the reporting of superannuation total fees and charges. I also want to make a point about the issue of exit fees, Senator Cherry. I notice the minister referred to entry and exit fees in her speech. Our concern is not so much that there have been entry and exit fees on so-called ‘old products’, which we acknowledge have tended to disappear. Labor’s concern is that exit fees will spread.

Our contention has been that, in a so-called choice environment, where people move superannuation from one fund to another, for whatever reason, the product provider will seek to lock people in through an exit fee and then exit fees will spread very quickly. Let’s say you are a commission based adviser and you convince an individual to come into a super product, you are getting commission in some cases and your income as an adviser is dependent on the commission. You do not want the person whom you have convinced to sign up to the product to leave, because you will lose your
income. That was the basis of the old exit fees. So we do want exit fees, again, reported to the regulator.

Finally, on the reporting issue, Labor also believe that it is critical that the information that is gathered is not published just in the aggregate but available for public scrutiny via the web site in the micro—in other words, we know what particular funds are being offered. People can say, ‘Go and check Rainmaker’—and there are a couple of other survey companies—but there is nothing better than genuinely independently gathered data from a government organisation. I think private organisations have a place and do a good job, but an individual should be able to go to a government web site and see that fund A is charging half a per cent administration fee and that it might be charging up to one per cent commission. As much as Labor are sceptical about the so-called competitive pressures, if you are going to have any sort of competitive pressures that information is vital.

I want to raise a second issue with the minister. Minister, can you confirm that the bill will apply to employees under federal awards in the federal industrial commission and will not apply to employees under state awards in the state industrial jurisdiction?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.39 p.m.)—First of all, in relation to exit fees, I can understand how Senator Sherry is sceptical about competition and the downward pressure on fees and charges. But I think it is difficult to conceive how higher competition will lead to higher exit fees. We know now—leaving aside the old products—that currently exit fees either do not exist or at least are not very high. We obviously have to take a monitoring position and keep an eye on it. But I do not think the exit fees present such a problem that they would be in any way prohibitive to people moving funds, if they wished to do so. Certainly, that is not the intent of this legislation. If the legislation does not achieve its outcomes, obviously we will have another look at it. That is certainly far preferable to simply banning exit fees. We do not know what effect that would have where these imposts are passed on to those who might remain in the fund. I think we are better off to let the regime run and just keep an eye on it, in case there is any issue with exit fees.

I am sure that if consumers do not want to pay exit fees—exit fees must be disclosed—they will certainly not choose a fund with an exit fee. One issue we have is to get those people who want to move out of a fund to do so without large exit fees and, if they are out, they certainly will not go to one where there is a high exit fee and that fact must be disclosed. In relation to Senator Sherry’s earlier question, yes, it applies to federal awards only and not to state awards.

Senator SHERRY (Tasmania) (4.41 p.m.)—Labor have an amendment on entry and exit fees and I will make some further comments when I move our amendment. I am glad that the minister has confirmed that this so-called choice in respect of super does not apply to state industrial awards. Could the minister confirm that my understanding is correct that, in the federal industrial jurisdiction, so-called choice will not apply in respect of industrial agreements and Australian workplace agreements? In fact, can the minister confirm that, where an employer has those industrial provisions in place, there will be no choice in the federal industrial jurisdiction? There may be other forms of industrial instrument that will not allow choice in the federal jurisdiction.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.43 p.m.)—I have a brief answer.
Firstly, Western Australia already has, as Senator Sherry knows, choice. But I am proposing to write to state governments in respect of choice to see if they will extend it.

Senator SHERRY (Tasmania) (4.43 p.m.)—Just to clear this issue up, I did ask about the federal industrial jurisdiction, where this bill will be applied. Are there industrial instruments where there is no choice—for example, Australian workplace agreements and industrial agreements, or any other industrial instruments for that matter—or that prevent choice?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.44 p.m.)—Employers can satisfy their choice of fund obligations by entering into a certified agreement or AWAs with their employees. I think that is what Senator Sherry is asking. These agreements obviously allow employees to directly negotiate the superannuation fund into which their contributions will be paid. I understand from that that it is consistent with choice of fund policy.

Senator SHERRY (Tasmania) (4.44 p.m.)—I have a couple of remarks to make on the same issue. The government and, indeed, the Democrats have claimed in their media releases that this is about choice—about allowing individual consumers, employees, to choose a fund. What we have heard from the minister is confirmation that in fact that will not exist. This is one of the furphies in this debate. The mantra is choice but the government itself, through its own so-called choice bill, is putting limits on choice. Firstly, we know it will not apply to state industrial jurisdictions. Secondly—and I think more importantly—in the federal industrial jurisdiction where this bill will apply there will be no choice at certain workplaces. There will be no choice at workplaces covered by certified agreements, by Australian workplace agreements and, I understand, by industrial agreements of some other nature. We do not have full choice in the federal industrial jurisdiction where the government claims it is implementing it, so the government’s claim about choice is wrong.

I will make one prediction. Quite a number of retail master trusts have a deal with an employer with respect to AWAs and other industrial agreements that binds the employees to that retail master trust. That is a matter of fact; we know that. Those deals are apparently to continue. If the government is introducing choice in the federal jurisdiction, there is a bit of a contradiction when it allows some employees under industrial awards to exercise choice but does not allow employees under other industrial arrangements in the federal jurisdiction to exercise choice. It is a fundamental conflict. If you believe so passionately that choice is a good thing—that employees should be able to choose—in the federal industrial jurisdiction, why is it limited? Why are industrial agreements excluded?

If the minister is able to justify the position, well and good. But the problem the Liberal government has is that its claim to be overcoming the problem of multiple accounts is therefore shot down. The claim is that the problem of multiple accounts will be overcome by a portable account whereby, no matter where you work, you transfer your fund from one employer to the other. We now know that this cannot happen in the federal industrial jurisdiction. If you work for employer A where you are in a particular fund and you leave that employer and go to employer B with a workplace agreement and say to that employer, ‘I want my superannuation money paid into the fund that I’m already in,’ they can quite legally say, ‘No, we’re not going to pay it.’ If you move from employer A with your fund and go to employer B who has the right to say ‘no choice’
and does so, you are in two funds. What makes it even messier is that you might then move to employer C with wages and conditions determined under a state industrial jurisdiction and end up in a third fund.

There are two critical points here. Firstly, this is not choice. The government repeats the mantra of choice but this is not choice; it is restricted. It is restricted by virtue of state awards and by virtue of the government’s own decision not to apply it to certain industrial provisions in the federal jurisdiction. So it is not choice. Secondly, I make a prediction. Those who have been pushing the choice concept are mainly the retail funds, the financial planners and IFSA. They wanted choice. The argument, ‘We want choice to apply to employees under industrial awards but not to apply under certain industrial agreements whereby we have a deal with the employer in respect of a retail master trust,’ is hypocrisy. My prediction is that whatever happens with this choice bill in the future, no matter who is in government, the exclusive arrangements retail master trusts, in particular, have with particular employers under industrial provisions that are not covered by this bill will inevitably cease. Inevitably there will be pressure on the government of the day. People will say: ‘You’ve got part choice—how can you have part choice? You either have choice or don’t have choice. You can’t have a fundamental contradiction in your position.’ Inevitably the provisions that prevent a new employee from requiring the employer to put the money into the fund they have been in with the previous employer will fall—they will end. That is my prediction.

I do not think these retail master trust providers or these planners, some of whom have particular agreements with individual employers, have thought about this much. Once you have choice it will inevitably spread and those exclusive agreements will cease at some point in time. Employees are not going to cop being told, ‘Choice is here; this is the brave new world,’ having choice at one workplace and then moving to a new workplace to be told by an employer, ‘No, choice does not apply here,’ because they have some sort of certified agreement or workplace agreement. That will not continue. That is my prediction. It is hypocritical, it is contradictory—it is a major contradiction in this bill—and it is the reason why, although the minister claimed in her second reading speech that it solves the problem of multiple accounts, it does not solve the problem of multiple accounts.

The minister says that there is a problem with multiple accounts, which Labor accept. We have another solution to that—automatic consolidation of multiple accounts. The minister claimed that these small multiple accounts—and most of them are small—are eaten up by fees. That is not right. We have what is called a member protection regime with respect to small amounts. The small amount is member-protected to $1,000. So that claim by the minister is not correct—not in full, anyway. There are a lot of accounts around that amount.

I would like the minister, if she could, to respond to this fundamental contradiction. We have part choice in the federal industrial jurisdiction; we have not got full choice. Perhaps the minister can explain, or perhaps the Australian Democrats can explain, why we have ended up with part choice in the federal industrial jurisdiction and not full choice. What are workers who are in a fund with employer A going to do when they leave that employer and go to a new employer who says: ‘Tough luck. Choice doesn’t apply. We’ve got an industrial provision here that prevents choice, and you will have to accept it. You will have to join the fund that applies at this particular workplace
and you will obviously end up with multiple accounts’? An exit fee might even apply.

Senator Cherry—You are making it up.

Senator Sherry—We will find out about that. I will comment further on exit fees when we get to our proposition to ban these outrageous fees so they never see the light of day. If the argument from the minister is that there are no more exit fees, what is the problem with banning a fee that does not exist?

Senator Coonan—I didn’t say that at all.

Senator Sherry—You said they are no longer being offered, Minister. That is what you said.

Senator Coonan interjecting—

Senator Sherry—We will argue about that when we get to exit fees. Perhaps the minister can explain this fundamental contradiction. Yesterday the Prime Minister and Senator Bartlett were out there saying, ‘We’ve got choice.’ I saw the news headline: ‘There’s choice’, but the government has introduced a bill where it is restricting choice in certain work places.

Senator Coonan (New South Wales—Minister for Revenue and Assistant Treasurer) (4.54 p.m.)—I can understand how the fact that the government and the Democrats have moved this debate along is galling to the Labor Party and probably to Senator Sherry in particular, because it is very difficult to see what Senator Sherry is really contending for here. Is he contending for the fact that choice is a good thing or that choice is a bad thing? I understood that the Labor Party’s position was that they did not support choice, and yet Senator Sherry seems to be critical of what he sees as some limitation on choice. Talk about contradictory positions—this is like the pot calling the kettle black.

I want to reiterate briefly a couple of points on the federal industrial jurisdiction. I cannot see how the agreements to allow employees to directly negotiate the super fund into which their contributions will be paid are inconsistent with choice policy. Collective agreements are consistent with choice. I think there would have been a riot if they had not been—that is, workers can have a vote on the collective agreement. To my way of thinking, that is a fairly effective, collective choice that is being exercised.

As we have always said in the numerous debates that we have had on these matters: portability complements choice. If an employee moves to an employer where the super fund is specified in a certified agreement, they can certainly use portability to consolidate their accounts. So I do not see that any of these so-called barriers, glitches or hitches really detract at all from the policy that this government espouses, which is that there should be choice. I believe that the way in which these agreements operate certainly allows choice, and the way in which portability operates certainly allows consolidation of accounts.

Senator Cherry (Queensland) (4.57 p.m.)—In his contribution, Senator Sherry has seized on one of the more significant changes to the choice model from that which was introduced by the government back in 1996—that is, its treatment of industrial instruments. Senator Sherry would recall that, when this legislation was first introduced into the parliament in the first term of the Howard government, it included a proposal to strip superannuation clauses out of awards and for the choice of funds regime to completely override award clauses. The Democrats, through discussions with Senator Kemp and subsequently Senator Coonan, have persuaded the government to shift away from that position. That is a very significant change in this particular model.
Senator Sherry would be well aware that the industry funds by and large deliver a very good product to their members. I think it is not unreasonable for us to ensure that, through the certified agreements process, the workplace as a whole is able to decide that the industry fund or some other fund is the way it wants to go. If the industry fund is not delivering for that workplace, then it can decide as a workplace in its next certified agreement to go for another fund or to go for completely unrestricted choice of funds. I think it is reasonable, as the minister has said, that the workplace as a whole, through a certified agreement on which it votes, is able to make those sorts of choices. It will ensure that there is some reasonable certainty, at least for the industry funds, and that some of the advantages that we have in terms of the industry funds are allowed to continue.

The most recent data from the Parliamentary Library show that about 40 per cent of employees in Australia are employed under certified agreements. That suggests the ability of that group to make a choice of fund collectively and that will ensure that their arrangements will be very little unchanged by this legislation. If, like the transport workers or the hairdressers in Queensland, they are in an industry fund that is a dud fund and not delivering they will be able to move out of that fund. They cannot do that under Labor’s model of having the award as the sole determinant of where their superannuation goes.

The other group which this legislation is of significant benefit to is the 40 per cent of Australians who are currently award free, according to the data I have from the library, and that percentage is rising year by year as the unions are not doing their work in unionising the non-unionised sector. As Senator Sherry would be well aware, when the Labor Party introduced, with Democrat support, the superannuation guarantee proposals, the Labor Party left the choice of superannuation fund for that group to the employer to decide. Under this legislation, from 1 July next year that 40 per cent of workers will have the right to choose where their superannuation goes.

We are also extending that right to federal awards, with the fallback to the default award fund. As the minister said, there are constitutional problems with its applying to state awards, and that is something that has to be dealt with through discussions with state governments. I would hope that most state governments would follow in some form, because I think this is a reasonable package with options that provide a reasonable balance between collective choice and individual choice and employees being able to hold their industry funds to account. I am very pleased with the position we have reached on the linkage between collective versus individual choice. I am surprised that Senator Sherry would question that as a matter, particularly given that the Labor Party has always so strongly supported collective bargaining and collective decision making in the workplace. I would be interested to see whether this is a matter of simply raising questions for the sake of raising questions or whether the Labor Party does intend to get rid of the notion of collective choice for workplaces to decide where their super will go.

Senator SHERRY (Tasmania) (5.01 p.m.)—As you well know, Senator Cherry, I have no problem with collective agreements or awards or otherwise, and I think Senator Coonan knows this. What I am highlighting here is that the government claims the mantra of choice—that individual workers can choose their superannuation arrangements—but the bill does not deliver it. I think it is important to understand this. Let us take a workplace of 50 workers who have a collective workplace agreement of some kind. Al-
though a new employee’s wages and conditions may be okay when they join that work force, there may be difficulties if the worker wants their contributions to go into a super fund that they want to bring with them—they know the fund, and they have identified the characteristics and the fees of the fund. As a new employee, they would not have been involved in the collective negotiations that may have happened two, three or four years ago and, when they start their job, they are told they cannot bring their fund to the workplace because of a collective agreement that they had no say in. It becomes a problem when there is an existing superannuation fund. I have no problems with awards and collective agreements and the like, but I am highlighting the Liberal government’s claim of choice for workers to pick a fund versus the reality that is being delivered in the legislation.

I am genuinely trying to highlight the issues. I do not want to take a long time on this. We know the outcome—the Democrats and the government have done another GST type deal, which they grandly announced yesterday. I just want to highlight the problems with this approach. I gave an example of a worker who is covered by a particular fund with employer A under the federal industrial jurisdiction going to work for employer B and finding out that some sort of collective choice of superannuation applies and they have to join that fund. They have no choice. A year or two later they may go to another employer and come under a state industrial award where this particular legislation does not apply, and they then have to join a third fund. These problems exist. The point I am making is that this is not ‘choice’ as the government and the Democrats have claimed, nor is it a solution to the problem of multiple accounts. The system needs significant simplification to resolve the multiple account problem.

The minister moved amendments (1) and (5) on interdependency relationships and spoke to them. The Labor Party support these and we will be voting for them. I am not sure whether Senator Cherry will recall, but there was a Senate committee report some years ago—and it is years ago now—in the context of the terminally ill. Under the current early access provisions, a person who is medically certified as terminally ill is not able to claim their superannuation before they die, which I think is pretty tough. If you are certified as terminally ill, and you are going to die in whatever space of time, you cannot take your superannuation out early. Obviously when you die it passes to your estate—to your partner if you have one. The Senate Select Committee on Superannuation recommended that an individual who has medical proof that they are terminally ill—they might have six months or a year to go—should be given early access to their superannuation without a tax penalty. I think that is a pretty reasonable proposition.

My recollection is that there has been no response from the Liberal government on the issue of a terminally ill person having early access to their superannuation, but it is relevant in the context of the government’s amendment on dependent relationships. There is a lot a couple could do with the money from their superannuation when the individual is terminally ill and in the last months of life. It would be a big help for them to get that super earlier rather than having to wait until they die, when their partner can access it but obviously they cannot. I would like to know what the government is going to do about the Senate committee recommendation that those people who are medically certified as terminally ill be allowed to access their superannuation before they die.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treas-
urer) (5.07 p.m.)—Senator Sherry, I deal with early release of superannuation and I am not aware of there being some outstanding response from the government in respect of that. There may be; I will check it. It certainly does not fit in this bill—it is not about early release of super. You certainly can get access if you are permanently disabled, and you would be very familiar with the quite stringent but nevertheless well-defined criteria that enable early access to super. There may be a good case, depending on the evidence, to have some access to it. ‘Terminally ill’ is something that can be very difficult to identify. One only has to recall the late former Senator Colston to know that certifications about imminent death do not necessarily mean that someone may not happily live for a number of years. I will check to see whether there is any outstanding response of the government. I would have thought that the current criteria would allow someone who is permanently disabled and terminally ill to get early access in appropriate circumstances.

Senator SHERRY (Tasmania) (5.08 p.m.)—I point out that it is the announced policy—one of the many—of the Labor Party to provide for the terminally ill to be able to access their superannuation. I think it is in the context of this dependent relationship issue; it is relevant and should be dealt with. I have one more general question which concerns the minister’s claim and again it is a mantra. They are using the term ‘place downward pressure on fees and charges’. That is a consequence of this bill—to place downward pressure. I notice that the financial planners, IFSA and even the banks—I must say the banks are pushing the boundaries of credibility a touch—have now adopted this terminology. I would like an undertaking from the government, and from the Australian Democrats for that matter, that there will be lower fees and charges as a result of this legislation and that no people will be disadvantaged because their total fees and charges go up. I would like that assurance. That is the basis of the underlying philosophical approach—competition. I would like a guarantee that that is what will happen.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.10 p.m.)—That is a nice try, Senator Sherry. It is very important to understand what the government is doing with the choice legislation. It is putting in place a framework with a robust disclosure regime that will in all likelihood produce an effect amongst those institutions providing services—that they had better be competitive about fees and charges or they are likely to find that investors will walk. That is what the rationale is all about. The government is not in the business of providing guarantees; the government is in the business of providing a robust framework and legislation that in all likelihood will deliver those outcomes. With effective disclosure, we will all be able to see those who want information being able to get it and the appropriate reporting that we have talked about. We are not completely in the dark with these kinds of outcomes. We know that where there is competition people who offer products with lower fees and charges are likely to be attractive to investors. That is indeed the outcome that this government expects.

Senator SHERRY (Tasmania) (5.11 p.m.)—I draw to the attention of those who may be listening that this is a really important issue. The minister is very careful; she says ‘in all likelihood’. There is the language; there is the qualification: ‘In all likelihood fees and charges will come down’ and there is the term: ‘place downward pressure on fees and charges’. We will be holding this government accountable to this claim that fees and charges will drop. We will certainly be holding IFSA and its constituent mem-
bers, the banks, and the financial planners accountable to the claim that the fees and charges are going to go down and not up. I think they will go up in some cases. We will hold them accountable. The Labor Party, as I have said earlier, does not believe that there are sufficient protections to prevent people, in some cases, being ripped off through excessive fees and charges. We will hold these organisations accountable. Every example of an excessive fee, charge, commission or exit fee that comes to our attention we will be publicising. We will be drawing fee rip-offs to the attention of the public. I do not want to be too emotive about it but we will bring these to the attention of the public.

Apparently, if you are bound to an employer by a certified agreement or some sort of collective choice agreement—whatever that means; it is a bit of a contradiction in terms in the context of super—you cannot do anything about it because you are stuck in that fund. An example of a workplace agreement in the mining industry has been brought to my attention. I will bring a copy of the agreement to the chamber next time we sit. It is sitting on my desk in Devonport. The agent had done a deal with a retail fund—an employer—that locked them into the particular superannuation retail master trust and, under this law, Minister, they cannot get out of it. There were five fees and charges. They were disclosed, I have to say that. Do you know what these fees and charges on compulsory super guarantee totalled? They totalled 9.9 per cent. Apparently this will be legal under this legislation.

I do not pretend that this is common. I am not one who goes around using examples like this and saying the whole industry are doing it because they are not. It is an unusual and a fairly extreme example but it certainly exists. I do not think their fees and charges will come down because there is no legal opportunity for these parties to get out of this particular arrangement where the agent has done the deal. I have spoken to the planner and he argues that this is a good deal. He argues that he gives lots of service, that he is available to give advice on call and that he needs to be paid. He claims that the total fees and charges—he gets a proportion of them; he certainly does not get them all—of over nine per cent are justified in these circumstances. But under this law people cannot get out of that arrangement.

I did not think the minister would be giving us a guarantee that the fees and charges would come down. I did think we would have the hedge or the fudge, the likelihoods and downward pressures. This is the language that the Thatcher government used in the 1980s when they introduced so-called ‘choice’ in their much more limited coverage of pension funds; it is not compulsory to have it in the UK.

Minister, you referred to so-called kickbacks—‘third line forcing’ is perhaps a less emotive term—and you have brought in an amendment to outlaw them. Will that apply to current kickback arrangements? In other words, will it be retrospective? Where a financial institution has done a deal to provide a cut-price loan to an employer and in return the employer, under a workplace agreement, has compelled the employees to be part of a particular retail fund, will it apply to existing kickback or third line forcing arrangements? Will it apply where there is some sort of contractual agreement that applies at a particular workplace?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.17 p.m.)—The regulation of kickbacks or benefits paid by superannuation funds to unions and employees will be prospective. I think the amendment says it will be effective from 1 July 2005, so they are certainly not retrospective. The regulations
will be able to specify exemptions to ensure there are no unintended consequences. It is not difficult to imagine that there could be something that might come within a definition that might otherwise be acceptable conduct. I think the principle that, as part of this legislation, we address this issue is very important because it would be entirely inappropriate to leave it unregulated. Obviously, the content of the regulation may need some careful thinking and consultation to ensure there are no unintended consequences.

**Senator SHERRY** (Tasmania)  (5.18 p.m.)—I suppose it depends on what the definition of ‘kickback’ is. A financial institution may do a deal with an employer to enter into a workplace agreement or a certified agreement to bind all the employees to a particular superannuation fund. The payment of commission to the commission agent, which would be quite common, is legal under this legislation. We do not agree with that, but the facts of life are that the law is going to be changed and this legislation will not outlaw such a practice. The commission agent would be getting the commission regularly from the financial institution. Would it be illegal for the commission agent to give any financial payments to the employer in those sorts of circumstances?

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer)  (5.19 p.m.)—I am not going to speculate on every possibility and combination of circumstance that may be developed under these regulations. As I said in my first response to you, it may be that an inducement of the kind you refer to may be something that these regulations would contemplate as being a standard arrangement that should continue. It may be that, when we see what happens by way of inducement, it would not be. I will not give some definitive answer here as to what is going to go into the regulations. Obviously, there needs to be a serious understanding of all of the possibilities and an appropriate response put into the regulations. The government intends that there be no unintended consequences and I think we need to be very careful about trying to guess, on the floor of the chamber, what may or what may not go into regulations that are not yet drafted.

**Senator SHERRY** (Tasmania)  (5.20 p.m.)—I think it is our place to look at this. We are changing the law in a significant way. We will disagree on the detail of the change, but this is an important detail. It is an important issue. As a Labor opposition we will have no say in what is in the regulations. It is a take it or leave it approach. I submit that where a financial institution may do a deal with an employer—it might be perfectly legitimate in terms of a retail master trust—at a certified agreement, legally a commission would be paid in some circumstances to a planner. From what you are saying, the financial institution could not offer a cheap loan to the employer and could not offer discounts on other financial products—or inducements of that sort—but I think it should also include the indirect payment. A financial institution makes a payment in the form of commission to the planner and the planner then makes a payment. This should include so-called soft dollar payments.

This reminds me that the Australian Democrats have never actually responded to the ASIC report on soft dollar and what they propose to do about it with respect to the legislation we are considering. Senator Cherry might like to indicate whether they would ban soft dollar or at least restrict it. Soft dollar payments are where inducements—an incentive is a word that other people would use—are used to entice a planner: overseas trips, discount loans or conferences which they attend for two hours and spend four days on a golf course at some exotic international location. ASIC’s report
outlined some quite interesting inducements. Can the Democrats indicate what they propose to do about soft dollar inducements in the context of this legislation? I have not seen any proposals from the Australian Democrats with respect to soft dollar beyond the simple issue of disclosing it.

Senator Cherry (Queensland) (5.23 p.m.)—I will respond briefly to that, and then I will speak to the amendments to the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2003. The Democrats are well aware of the ASIC report on soft dollar payments. One of the deep concerns we have is that a lot of these things fall outside the disclosure regime that ASIC has put in place. I note, as Senator Sherry would be aware, that ASIC’s disclosure regime includes the mandatory use of the ASIC fee template and product disclosure statements. This ensures all matters of fees—both exit fees and commission payments—are included in the mandatory product disclosure statements and also in periodic statements. Senator Sherry would also be aware that my colleague Senator Murray insisted that all fees in product disclosure statements and periodic statements should also be included in dollar terms, because all financial literacy reports make it quite clear that consumers better understand dollar figures rather than percentage figures. That is something we have pursued very hard. I acknowledge the work of Senator Murray and also Mr Cameron in getting those matters successfully resolved.

I want to briefly speak to the amendments which have been moved by the government. These amendments arise directly out of discussions I have had with Senator Coonan over the last couple weeks, and they are very important. We have been discussing for a short period the kickbacks provision. This is based on a similar provision in I think section 78 of the Retirement Savings Accounts Act. It was put in there to add an extra level of emphasis to the need to ensure that employers are not influencing employees’ superannuation decisions. There are already provisions in the financial services regulations which make it quite clear the employer is not allowed to offer financial advice unless they are a licensed financial advisor.

That is something which one should see as a parallel to these provisions. We make it quite clear they cannot offer advice and they cannot accept an inducement. It is a civil liability clause, but it can certainly give rise to significant costs. As an educative device in the development of choice, I would hope the choice consultative committee would be emphasising quite clearly to employers the very significant civil liability they could be open for under this clause if they actually proceed with inappropriate action. It is an important provision; it is important protection for employees. We want to get to a stage where it is employees who are making real decisions rather than their employers.

The other amendments we are moving today ensure that default funds have a mandated level of insurance cover. That will be dealt with by regulation as a result of further discussions, but I thank the minister for acknowledging this is a very important issue. It was raised in all of the Senate committee inquiries we had on the choice of funds bill. One of the great benefits of the award based industry fund system is the provision of a death benefit, which is often the only death benefit that some workers will actually have. Mandating that across the board for default funds is an important part of ensuring that we maintain the benefits of our current superannuation scheme in the brave new world we are moving into, as well as emphasising the bits where we need to improve our superannuation scheme.
The other significant amendment the minister has moved recognises interdependent relationships in the superannuation taxation law for the first time. This is a very important amendment, and one which the Democrats have pursued in one form or another since 1995. Once again, I should acknowledge the work of Senator Coonan in getting this amendment accepted by the government. The amendments are broadly based on the provisions in the Property (Relationships) Act of New South Wales as well as those in the Migration Act that deal with interdependent couples. It will ensure a same-sex couple will be treated on the same basis as a heterosexual de facto couple—that is, where they can establish there is a close relationship, they are living together and they are providing personal and financial support for each other, they are recognised as a relationship for the purposes of superannuation taxation law.

With this amendment we are several significant steps along the way of getting the Taxation Office out of the bedrooms of Australians in determining whether tax will apply to death benefits. That is something which the Democrats feel very strongly about. The Taxation Office and the tax act should not be engaging in social engineering as to who can and cannot get a tax benefit by determining who they can and cannot give their death benefits to. Senator Sherry and others who are listening would be aware of cases in tax law where a mother can leave her superannuation benefit to her son when she dies but not vice versa without potentially attracting a significant tax impost. Under these provisions the relationship will be recognised where they are living together as mother and son, Garry McDonald style, and the superannuation would flow through.

When I discussed this issue in earlier Senate debates, I gave the example of a family owning a delicatessen whose child, who had been living with them, died and the death benefit could not flow back to the family without a significant tax impost by the tax office. These provisions will deal with that situation in addition to the very serious discrimination which has existed for a long time against same-sex couples.

The Democrats are very pleased to see these amendments coming forward. A very important part of our human rights agenda is that same-sex couples should be recognised on the same basis as heterosexual couples. We are pleased to be putting these amendments into legislation today. I also thank the minister for her commitment to remind other portfolio ministers that this is now government policy and that their statutory funds need to be amended accordingly. I am putting the government on notice that we will be pursuing their progress with those letters in the coming months. I will expect to see those amendments coming forward from portfolio ministers, particularly the finance and the defence ministers, very soon.

The other amendment which is not dealt with here, but which was discussed in some detail earlier, is the issue of the reporting of fees and charges over the next five years plus. The minister has given us an assurance that those amendments will be brought forward fairly soon. The Democrats are very pleased about that. We think it is important that we do monitor fees and charges in a very comprehensive form, looking at the range and the quantum that are being charged so that consumers can get even further information to compare whether they are right and proper fees and charges with what else is out there in industry. All that information is very important to ensure that consumers make informed choices.

ASIC has been doing some very good work in this area. The ASIC fee template provides a very good model on which we can
start developing what fees and charges should be monitored, how they should be reported and how the information should be presented to consumers. Comparing the debate at this stage to where we were when we first looked at the choice bill back in 1997, it is extraordinary just how far the debate has shifted, even in fee disclosure and what is required of superannuation funds and providers through the financial services regulations. The Senate and its committees have done an enormous amount of work in improving those legislative proposals brought forward by government. We are a long, long way from where we were when we started seven years ago, and I think it is time to get on with it.

Senator SHERRY (Tasmania) (5.32 p.m.)—I have indicated we will be supporting amendment (5) to schedule 2 in respect of same-sex couples. It is given the term in this legislation ‘interdependency relationship’. I suppose that is because the Prime Minister could never come to utter the words ‘same-sex couple’.

Senator COONAN—No, it’s broader.

Senator SHERRY—I know it is broader. I accept you have occasionally referred in public to the inclusion of same-sex couples, but some of your colleagues are not keen to mention it publicly. Anyway, that is good. It is pleasing that it is happening, and we support that amendment. It has been Labor policy for some time. I have one question about amendment (4) to do with civil liability and the so-called anti-kickback provision. Why is it limited to civil liability? It seems to me that a kickback is a bribe. I am not a lawyer. I know the minister is, so I am sure she can explain. Certainly some forms of bribery would attract a jail sentence, not just a civil liability. Why do we have a civil liability and not the ability, in the case of bribery on superannuation, for a person to be sent to jail or at least the option for the judge to determine that that is an appropriate penalty in extreme circumstances?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.34 p.m.)—I should clarify an earlier response I made in respect of the Senate report on early release. Apparently there is an outstanding government response. I do not have any advice on it, but I will chase that up and see where the recommendations of the Senate are up to, which I certainly always carefully look at.

Senator Sherry—We know you do that—keep an eye on him.

Senator COONAN—He is not the only one. I will deal with the issue of kickbacks and liabilities in a second, but so that we are all clear about it—because the discussion has ranged a little more broadly and has dealt with issues to do with disclosure and the ASIC report—I think it is true and accurate to say that we are trying in the legislation to ban payments to employers, which would include the so-called soft dollar arrangements, in exchange for choosing their fund as the default fund. That is the mischief that we are seeking to address. Commissions provided for financial advice to employees per se would not be affected and are obviously regulated in the other frameworks that we have discussed.

Senator Sherry raises a fair point about the difference between civil and criminal liability. Ultimately it is a matter of judgment as to what you do about consequences of infringements. Why we chose civil liability in this case is that it is consistent with the RSA provisions on which it was modelled following the Democrat negotiations. That is what we have endeavoured to make it consistent with. I should say to Senator Sherry that, whilst criminal liability for egregious behaviour might seem to have some appeal, it is
often extremely difficult to establish, whereas civil liability will probably address this appropriately and will be consistent with its companion provisions in the RSA.

Senator SHERRY (Tasmania) (5.37 p.m.)—You mentioned that this will be confined to the provision of the default fund. Wouldn't it apply generally? We are talking about the general, not just the default fund.

Senator Coonan—Yes.

Senator SHERRY—I am glad that was clarified. I was not aware the Democrats had negotiated a civil liability with respect to RSAs.

Senator Cherry—It was a long time ago.

Senator SHERRY—Yes, it is a long time ago. I contend that, because it is consistent with RSAs, it does not necessarily mean that it is an adequate penalty, particularly in the context of this legislation where—

Senator Cherry—It's easy to prove.

Senator SHERRY—I understand it is easy to prove. I think you should have both options. I would not suggest that, where you have got inducements in respect of soft dollar commissions, you would send a person to jail—I think generally that would be a bit tough. But, if you had a very clear case of bribery or an outright case of a very serious matter, let us not forget who ultimately pays for these inducements. The fund member pays for it via a lower retirement income. They have effectively paid for it. It is a very serious matter when it occurs in those circumstances. I might leave my comments there because I want to progress to our amendments very shortly. I think they were both the general and the specific questions I had with respect to the government amendments. I can ask further questions and make comments when we get to our amendments.

But, turning to the education campaign, the minister mentioned a figure of $14 million. The legislation is going to pass and I take it from what has been said in the press releases I have read that, whenever the election is called—in four weeks, four months or whatever—we are not going to see a massive government advertising campaign of ‘Unchain my super’, which I think would be in line with previous themes.

Senator Cherry—‘Unchain my pig.’

Senator SHERRY—‘Unchain my pig!’ I have seen an $8 million pig advertising campaign recently, extolling the virtues of the co-contribution scheme. Minister, I take it from what you have said on the so-called education campaign—these are propaganda campaigns and political advertising by the government of the day in the most blatant form, and there has been a whole range of them recently—that we are not going to see an advertising campaign in the guise of an education campaign this calendar year in respect of this legislation. Minister, could you just indicate that to the chamber please?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.40 p.m.)—In respect of the education campaign, I have noted that there have been some people who have criticised the government for only being prepared to devote $14 million to advertising about choice of fund policy and to educating people. A lot of it will be the ATO taking advantage of existing relationships with employers and employees to educate them about choice of fund initiative. I am sure it will increase the number of people it will attract. The ATO has access to that kind of information. It does not necessarily mean you have to go and advertise on television. We have agreed that we are going to have an independent committee to advise in respect of the key messages. It is needed. I take issue with Senator Sherry calling it government propaganda. Superpartners Super Survey 2004 found that many Austra-
lians, as I am sure Senator Sherry would acknowledge, lacked the knowledge and confidence to make decisions about super. Eighty per cent of respondents said that they would need independent information to help them choose.

It is important that people get information about this. That is why—unrelated specifically to this bill but as a complement to what this government is doing in superannuation—I instigated a financial literacy task force to look at how one can hone messages. It is not much good, as I have seen with financial institutions, putting out leaflets to schools and having them sit under the teacher’s desk. It does not necessarily mean that messages get heard or that education reaches its targets. I think it is very cynical of Senator Sherry to be suggesting that this is propaganda. If these policies are to work, people have to be informed about them. They do not just automatically know. I think it is well acknowledged that superannuation is a complex product, and it is entirely justifiable that people need information. Insofar as there is likely to be a TV campaign, that certainly would not be until next year.

Senator SHERRY (Tasmania) (5.43 p.m.)—That is good to hear. We have had campaigns on the health system and the pig campaign on the co-contribution, and I think we are getting a carers advertising campaign. I draw a distinction between a genuine education campaign and the political propaganda exercise such as that we have seen recently. The government has spent well over $100 million so far. Isn’t it funny—surprise, surprise!—that the money spent on these advertising campaigns increased dramatically in the six months prior to the likely date of the election? I must be getting a bit cynical in my older age.

Senator Coonan interjecting—

Senator Eggleston interjecting—

Senator SHERRY—You can laugh and you can point out examples. You can point to legitimate cases of the former Labor government spending money on advertising. Many of them were legitimate. But the point is that I can recall Mr Howard getting up and railing against these, saying that he was going to improve standards. This government seems to have refined these advertising campaigns—propaganda campaigns—down to an art form, both in terms of the obvious political propaganda and in terms of the massive quantities of money, the like of which we have never seen in this country. I can recall sitting over there being regularly criticised as part of the government. I do not think Senator Coonan was here then. But Senator Short, Senator Alston and Senator Bishop—we all remember Senator Bishop—were railing against these advertising campaigns. They were criticising us. There were questions and motions about the education campaigns of the previous Labor government. So it is no wonder I am a touch cynical about these propaganda campaigns. I am pleased that the Democrats are sparing us from a $14 million propaganda campaign—a large part of the $14 million would be for a propaganda campaign—between now and the election, whenever that may be.

One of the central contentions of the government is that choice brings competition. The more choice you have in a market the better off you are, because there is competi-
tion. But essential elements to competition are an informed market and informed consumers. They need to have knowledge of the product. I pointed out earlier in my speech in the second reading debate the difficulties consumers have in understanding super. These are difficulties that have been well established through a whole range of surveys. You would need a finance degree to understand many aspects of superannuation. Education of consumers to improve financial literacy about superannuation is important. But what hope do we have of making nine million Australians financially literate to that degree between now and 1 July next year?

I am not saying that we should not try to improve levels of financial literacy—we should. But nine million Australians at some point in time will be affected by this legislation, depending on whether they are working under a state or federal award or are covered by an industrial instrument, a certified agreement or whatever. Are we seriously suggesting that we are going to educate them between now and 1 July next year so that they will all be financially literate enough to make the informed choices that the competitive market requires? To that extent I am critical of the level of money being spent on the education campaign. We can try, but I just do not think it is going to happen. We can try in the schools. I talk one-to-one with many people about super and I have to say that in a lot of cases their eyes blur. Those are our concerns about the government’s so-called education campaign. I do not think there are any further points we can make about that at this point in time.

**Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.49 p.m.)**—I find it very difficult to understand how Senator Sherry—or indeed anyone—could complain about the government’s advertising of the co-contribution measure for low-income workers that has been running on TV. How else would you in a short time frame tell Australian people—particularly people who are low-income earners—about a benefit that they are able to access that they have never heard of before and would otherwise not know existed? If I may say so without being pejorative about it, it is stupid beyond belief to think that Australians can suddenly know about government policy if you do not tell them.

The education campaign is entirely justified. The number of hits on the web site in response to the co-contribution advertisements entirely justifies the government’s view that an education campaign is absolutely necessary. The same thing will happen with choice—although it may not be quite as critical because people might have happened to hear about it. But the co-contribution would be a completely unknown phenomenon if the government did not tell people about it. It relates entirely to the passage of the legislation and it coming onstream so that people can access it. It is not cynical. It is not a political campaign. It is all about helping low-income Australians know about a product that can enhance their savings. It is entirely justified.

Question agreed to.

**Senator SHERRY (Tasmania) (5.51 p.m.)**—I will not be seeking leave to move the opposition amendments together, because they cover three distinct and separate areas, so I will move them individually. I move opposition amendment (1) on sheet 4295:

(1) Schedule 1, page 7 (after line 21), after item 15, insert:

15AA At the end of section 12

Add:

(12) A person employing 20 persons or less is not an employer within the meaning of this Act.

This amendment relates to exempting small business from the provisions of this legisla-
tion. I think one of the significant untold stories about the impact of this legislation is the impact it will have on small business. If we look at this legislation, we see that there are bureaucratic requirements on the employer to comply with this proposed new act that we are considering. I noticed that the minister was very careful in the words she used in her second reading speech when she referred to minimising the costs to the employer. It is pretty careful to use that form of words. The bottom line is that this bill means a substantial additional administrative workload for the employer.

I will highlight what will occur with respect to the employer. Let us remember that currently an employer pays into only one superannuation fund, and that fund is usually determined by the industrial instrument, determined in turn by an independent industrial commission. A large part of this bill relates to additional paperwork and administrative requirements on the employer. Let me go to some of the provisions in this bill. Employers are required to—they must—offer each employee a form to effectively select a fund. That is new. At the moment employers do not have to do that but, if they are covered by this bill, they will have to do it for each and every employee. So it is a new form. The employers will then collect the forms or the notifications that the employees give about the fund to which the employers are to make contributions. I know what the penalties were in the previous act if employers failed to comply, but the bill states in proposed section 32N of division 6—standard choice forms:

1. An employer must give a standard choice form before 29 July 2005 to each employee employed by the employer on 1 July 2005.

2. An employer must give a standard choice form to an employee within 28 days of the employee first commencing employment with the employer.

That is new employees, presumably. Then the employers will need to—not just in the initial hit stage, if you like, in July—act on those forms. If the employees do not give back the standard choice form then there is the default fund. The standard choice form includes a statement that the employee may choose any eligible choice fund, the name of the fund, other information that is required and, if the employee is a member of a defined benefit scheme, information in relation to that scheme that is required, under the regulations, to be included.

This may be acceptable to medium and large business, but this is a very significant change and additional paperwork for small business. We hear a lot from this government about small business and not increasing paperwork and red tape, but the fact is that this is very onerous for small business. Once the employer has gone through this paperwork, he must then pay those funds. If an employer had 19 employees then there could be 19 different funds that the employer will be legally required to pay moneys to. This might not happen initially; it is more likely to happen over time. So you could have a small business employer required by law to pay into 19 different superannuation funds. It is perfectly feasible that that could happen.

Not just that, the employer has to forward the contributions. The funds will change, of course, when new employees come in. They will not be the same 19 funds. There is a high likelihood—almost a certainty—that there will be different funds. So the employer is going to be required to pass contributions on to different superannuation funds, and these funds will change with the new employees. New employees might have a different fund that the employer has never paid to before. There are thousands of superannuation funds. There is no lack of superannuation funds. I think there is a high likelihood
that the employer will have additional paperwork and red tape requirements.

I have seen the documents. Generally they are electronic today, but not always. The employer certifies the name of the employee and the contribution amount in a particular column electronically; some do it by hand. They then send this information—sometimes monthly, but usually quarterly—to the superannuation fund along with the money. Often this is still done by cheque. Many small businesses still operate by cheque. Some operate by cash, but that is another story. In this case it could be a cheque or an electronic transfer. I know that the electronic transfer method is increasing, but I also know that many small businesses still pay by cheque. They have to write out 19 different cheques and 19 different reports or documents with the level of contribution detail for 19 different superannuation funds. They may do this by electronic transfer, but it is still additional paperwork, whatever form it takes. It is certainly far worse if they do it by cheque. It is additional paperwork, additional complexity and additional red tape.

The Labor Party policy is that we support a safe choice regime but we do not support it being applied, certainly in the first instance, to small business. We think that is inappropriate. I am trying to think of a more complicated paperwork burden. I think this would be worse than the GST. At least in the case of the GST the moneys are being paid and the forms are being sent to one point: the tax office. In the case of this so-called ‘choice’ legislation, in many cases the paperwork will have to be sent to 19 different superannuation funds—19 different points of collection. I cannot think of a more serious increase in red tape as a consequence of regulation or legislation that this parliament has considered in recent times, and I include in that the GST.

I think there will be a lot of unhappy small businesses around the place, frankly, when they have to comply with this in July. I notice that it is after the election. How often do we get these sorts of impositions on business, in this case small business, after the election? I think there are going to be a lot of unhappy businesses around when they have to comply with this legislation in July next year.

I commit to alerting small business to the additional administration and red tape. I will give a commitment to the chamber that the Labor Party will be informing business about the extra red tape and administrative requirements. Between now and the election, whenever that is, we will do our best to let small business in particular know about our position on this. I would have thought it more appropriate for the government to adopt at least a phased introduction in consideration of the interests of small business, but that is not happening.

I wanted to highlight why the Labor Party want to exclude small business from this. It may be that in five or 10 years time you would include small business, but it is an increase in cost to the employer. Even the government concedes that. The statement of the minister refers to ‘minimising the cost to the employer’, so there is additional cost to the employer, which will obviously vary from employer to employer. My question to the minister on the Labor amendment is: what are the penalties for breaches by the employer where they fail to notify employees and carry out the various procedures that are required under this legislation?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.03 p.m.)—What we have just heard from Senator Sherry is quite an extraordinary position on the part of the Labor Party. They are suggesting that just because you are an
employee of a small employer you do not get to have any of the benefits of this legislation. You are just stuck and it is just your bad luck if you happen to be employed by a small business—that is, one with 20 or fewer employees. It is an extraordinary position for the Labor Party to be advocating that ordinary workers should be penalised and discriminated against by not being able to access arrangements and provisions that, if you happen to belong to a medium sized employer, would flow to you.

The government’s policy is very clearly to allow employees to choose, including small business employees. We do not say that just because you work for a small business, ‘Bad luck. On your bike; you don’t get it.’ We say that employer costs can be contained. I have consulted very widely on this legislation. There has been significant amendment to accommodate the concerns of business that were expressed in an earlier version. I certainly hope that Senator Sherry is not going to be misinforming small business about what the burdens are, but just in case Senator Sherry is tempted to misinform small business I do want to run through the arrangements.

The government has been and is very conscious of the need to keep employer costs to a minimum in providing this very good public policy position on choice. Where an employee does not choose a fund, the employers will continue to make contributions to the same fund as they do now, provided that fund offers a minimum level of insurance cover, as we have discussed. I am advised that the vast majority of super funds already offer life insurance, which is going to take care of that.

This is essentially a status quo model. It does overcome difficulties with the previous model, which required employees to monitor the default fund or face the risk of significant penalties. That was not appropriate and that is why the government made the amendments it did. Further, when an employee makes a choice selection, he or she will have to provide the employer with information to demonstrate that the chosen fund will accept contributions, which relieves another burden. An employer will not have to accept the chosen fund if the employee fails to provide this information, so it is a status quo model that should absolutely minimise that burden on business.

I am surprised that what Senator Sherry seems to presage the great risk of this arrangement is that somehow or other employees might choose 19 different funds. If they do, with advances in software that is quite cheaply available, electronic transfers make it easier for business to contribute to more than one fund. People do not all have the same bank accounts, yet businesses and payrolls manage to cope very effectively with making payments to 19 different bank accounts. I am advised that MYOB software provides employers with the ability to implement choice with no additional workload burden and potentially lower costs. Employers can send all superannuation contributions to employees’ funds direct from their MYOB software. Whether they have one fund or many funds, the contribution process is identical. The service has already been proven effective and is growing rapidly in usage, particularly in Western Australia, where choice has been a reality for some time.

Even where employees have to make contributions to multiple funds, the market is already responding and developing clearing houses, which allow employers to pay to multiple funds at little or no additional cost. This has also been the experience in Western Australia. An employer will make one payment to the clearing house, which will then distribute the contributions to the employee’s chosen fund on the employer’s behalf. I am
aware of superannuation funds that intend to disburse superannuation benefits to other funds on behalf of employers free of charge, provided of course that the fund is the default fund. That might be one of the carve-outs that might be necessary in respect of looking at the arrangements we were talking about a little earlier. I am confident that the market will respond and continue to develop to meet the need to minimise employer costs.

The other important thing to emphasise is that employers can satisfy their obligations by entering into a certified agreement or AWA, as we said earlier. Employers who also make contributions in compliance with a state award are not covered. Otherwise, employers will have to give their employees a standard choice form, which will advise employees of the important matters they should consider before they exercise choice. The Australian Taxation Office will have charge of developing this form. As I said a little earlier, where an employee does not choose a fund, employers will continue to make contributions to the same fund as they do now. It is not inconceivable that a lot of people will not make a choice.

However, the government will consult with industry about the insurance obligations that we also mentioned a little earlier. I will come in a moment to the penalty provisions. Occasionally, ideological positions that are taken by the major parties in these kinds of issues are interesting. We seem to be swapping sides. It is quite ironic that the Labor Party seem to be exercised about small business costs, when they oppose what small business have wanted—indeed, have screamed from the rafters as wanting—which is some exemption from the unfair dismissal laws. It is an absolute bane on their life and productivity.

Turning to the penalty provisions, the penalty is 25 per cent of the contributions paid to an incorrect fund. For example, if an employer pays $1,000 to an incorrect fund, the penalty would be $250. The penalty has been capped at a maximum of $500 per employee, with an ATO discretion to reduce it to zero. Those amendments came in on my watch, Senator Sherry, following consultation with business, and on my clear acknowledgement that this government would not be part of any regime which would significantly increase the cost to business without getting some commensurate assistance. Indeed, I have been very careful to look at what is available to minimise those costs. That is why I have used the words I have in my contribution tonight, after having taken those matters on board and after having, in consultation with industry groups and small business, developed a response that they will be able to manage without incurring significant costs.

Senator CHERRY (Queensland) (6.11 p.m.)—I think Senator Sherry should consider whether to withdraw this amendment. The amendment changes the definition of ‘employer’ in the Superannuation Guarantee (Administration) Act 1992. It goes much further than he intended in his speech. The Democrats will oppose this amendment for two reasons. One, we do not believe that the definition of ‘employer’ in the Superannuation Guarantee (Administration) Act 1992 should be changed. We think it is absolutely essential. When we supported the introduction of the superannuation guarantee back in 1992, we put in place a longer phase-in period for small business employees to deal with superannuation guarantee. That phase-in period is now complete. We would not now want to put in place a new set of different rules under the superannuation guarantee laws.
for small business employees, as opposed to larger business employees. I am very surprised that the Labor Party would be bringing forward an amendment that would have the intention of changing the Superannuation Guarantee (Administration) Act with that outcome.

The other reason why the Democrats will be opposing this amendment is that it is completely inconsistent with the view we have taken in other areas, particularly in other parts of workplace relations law relating to the treatment of employees of small business. We have always held the view—and I think the minister has encapsulated it, and I look forward to using the quotes in subsequent debates—that employees of small business should have the same industrial rights as employees of larger business. We have adopted that view on unfair dismissals—where it was debated 23 different times. We will adopt that view when the government brings forward its legislation to try to exempt small businesses from the redundancy provisions, and we will adopt the same view today that we believe that small business employees should have the same industrial rights and obligations as all other employees. From that point of view, the Democrats think it is important to have consistency, and I am a bit surprised the Labor Party has brought the amendment forward, particularly given the unintended consequences of pulling small business out of the Superannuation Guarantee (Administration) Act 1982 completely. I suggest to Senator Sherry that he consider whether he wants to push this amendment.

Senator Sherry (Tasmania) (6.13 p.m.)—I do not accept it has that consequence. I have faith in the clerical staff of the Senate who drew up the amendment. Senator Cherry, we are discussing here—and supporting—superannuation law, not industrial relations law. I think that is an important difference.

Senator Cherry (Tasmania) (6.13 p.m.)—I am not saying that, but we are talking about superannuation funds. It is very different from payment of wages and other forms of conditions. There certainly is a relationship, but I think small business do deserve some consideration with respect to the additional administrative requirements that will be incurred when this is introduced. The minister said she hoped we would not misinform small business. We certainly will not, Senator Coonan. The Labor Party will at least be conducting an education campaign—with its own money—about the impact of this.

Senator Coonan—On TV?

Senator Sherry—I do not think it will be on TV, because the taxpayer will not be paying for it—unlike some of the other education campaigns we have seen. The minister laughs and smiles. The Liberal Party know that they have been getting away with absolute murder in the last few months. They laugh and smile at spending over $100 million on these so-called education campaigns. Yes, we will take up our right to inform small business. I did a direct mailing to small business in Tasmania on this issue about a year ago with my colleague Mr Sidebottom, our very good member—a fantastic member—for Braddon. We sent a direct mail letter out to small business about the requirements that needed to be met under the old legislation. I accept that the government have changed the provisions under the new legislation, but there is still a significant administrative burden—and a new burden—on small business. The response was that small business were concerned at the prospect of paying into multiple funds.

I alert Senator Cherry to the fact that Senator Coonan touched on the solution—
and I think it is one of the real reasons the government is putting forward this legislation. What did she suggest as the solution if small business want to avoid paying into more than one fund? AWAs, Senator Cherry—AWAs. This is one of the critical weaknesses of this so-called choice bill, Senator Cherry. What is an employer going to do? I think that there is going to be a significant behavioural shift, understandably, on the part of the employer. Employers will not want to pay into more than one fund. I saw some interesting polling research on this. Small business employers do not fancy the prospect of paying into more than one superannuation fund, and the minister has suggested a solution.

Minister, you detailed the penalty for paying into an incorrect fund—I think that was the terminology you used—but what are the penalty provisions in respect of the other requirements? For example, if an employer does not provide the standard choice form that must be provided under section 32M, what is the penalty?

Senator SHERRY (Tasmania) (6.19 p.m.)—I will obviously take the opportunity of the dinner break to receive advice on the amendment from the clerks—because I anticipate that the debate will not conclude until after the dinner break. Clearly, the Labor Party’s policy is to exempt small business from the operations of the so-called choice of superannuation bill requirements to which I have been referring for the last 10 or 15 minutes.

Minister, in your response to my question about the employer having to give a standard choice form you referred me to the previous penalty of 25 per cent of a contribution to the incorrect fund. Could the minister explain how, if the employer does not give the standard choice form, a penalty based on non-payment to the fund would apply with respect to a breach of 32N? I do not see how the same penalty could apply to a breach in that area.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.21 p.m.)—My advice is that it does. Again, over the break I will see if there is a fuller answer that might be appropriate under the circumstances; but I think it is reasonably clear that it is exactly the same penalty.
Senator SHERRY (Tasmania) (6.21 p.m.)—I would appreciate your clarifying that. An employer would be in breach of the act if they did not provide the standard choice forms before 29 July 2005 to each employee employed by them on 1 July 2005. If the employer failed to do that to one or more employees—it could be a substantial number of employees—the contributions would vary from, say, quarter to quarter. What contributions are we talking about—the contributions that were made in the previous quarter or the contributions that are required to be paid in the next quarter? This is pretty important in the context of literally millions of forms, I suspect, being handed out by employers between 1 July 2005 and 29 July 2005. If I could refer to a month being ‘big bag’ month, July 2005 is it. That is the 28-day period by which employees must be notified. I am interested in more detail about penalties and how they would apply.

In relation to the contributions that would then flow from the employer to the various funds nominated by the employees, I notice that the bill states in proposed section 32ZA: Employers not liable for damages
An employer is not liable to compensate any person for loss or damage arising from anything done by the employer in complying with this Part. Does that relate specifically to division 8 or does it relate more broadly to other areas in the bill? Perhaps the minister could let us know what this exemption from liability applies to with respect to damages.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.24 p.m.)—I will take these matters and look at them over the suspension for dinner.

Senator SHERRY (Tasmania) (6.24 p.m.)—One of reasons I am raising ‘not liable for damages’ is that I am interested to know how that relates to the government amendment on ‘inducements’—if I can use that word. What is the relationship between the amendment the government has moved in respect of inducements and civil liability that would apply in those circumstances and ‘employers not liable for damages’? For example, if it were found that some sort of inducement involving the employer was made, would 32ZA mean that the provision that the Democrats have insisted on—‘forcing inducements’ and matters of that type—would not be effective with respect to the civil liability penalty that we have been discussing? Does the minister have any information on that?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (6.26 p.m.)—If there is anything further I can add, I will do so after the dinner suspension. But I can say that the 32ZA exemption applies to the entire of part 3A of the SG Act. The so-called kickback provisions apply to the SI(S) Act.

Senator SHERRY (Tasmania) (6.26 p.m.)—Minister, thank you for the additional information. In the few minutes before the dinner suspension, I want to refer my remarks to the position of small business. Again, I indicate that I do not know the number of small businesses under the federal industrial relations act that the bill will apply to when it becomes an act. The minister might be able to inform us after the dinner suspension of the number of employers and employees estimated to be impacted by the bill. The minister might also have some information on the number of small businesses of 20 employees or less and the number of employees that would not be covered by the provisions of this bill in the federal industrial jurisdiction.

We have talked about the issue of certified agreements, AWAs and other industrial instruments where there is a form of collective
choice, as the minister refers to, and the number of workplaces under the federal act and the number of employees that have those types of arrangements. One of the difficulties is that we do not know whether the arrangements that currently exist would have superannuation provisions in them. The minister may be aware of the number of such arrangements that have superannuation provisions in them. It would be useful to know the number of employers and employees. I understand that in the federal jurisdiction AWAs are secret; you cannot get the details. Where there is a superannuation provision in an AWA, would that cut across the requirements that we see in this bill and in the regulations on the disclosure of fees, charges and commissions?

In summation, we have a federal industrial relations act which has provisions relating to industrial instruments—for example, AWAs. How do the requirements under that act compare to the requirements in the bill we are considering where there is a superannuation provision in an industrial instrument under that industrial relations act?

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

Senator SHERRY—I have circulated revised sheet 4295. I thank the minister—and Senator Cherry, who is not here yet. The wording was incorrect, so we have circulated new amendment R(2A). I am not quite sure why it is numbered that way. I also thank the clerical staff who helped us prepare the amendments. I am not in any way critical with respect to the wording—we are working under somewhat more difficult conditions at this time of year and we are checking the detail of amendments because of the pressure and the timetable et cetera. I do not intend to make any further comments. The minister might have a response to my earlier questions, but I think we should be moving pretty quickly. I notice that Senator Cherry is not here, but I know his position. I am happy to accept that our amendment would not be passed, so we do not have to hold up the vote by waiting for Senator Cherry.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (7.31 p.m.)—It might be appropriate for me to deal very briefly with some of the matters raised prior to the suspension. Senator Sherry asked about the penalty if a standard choice form is not provided. To meet their choice of fund obligations, an employer must make contributions either to a chosen fund of the employee or, if one does not exist, to an eligible choice fund that meets the insurance requirement. An employer must provide a standard choice form before an employee actually makes a choice. If they do not provide this form, any contributions to a fund would not be regarded as meeting their obligations until they have provided the form. Therefore the employer would be liable for a penalty of 25 per cent of any contributions made to the fund during the time that they have not provided a standard choice form. As I indicated, the penalties are standard.

Senator Sherry also asked about the impact on employers. In estimating the cost of compliance for the regulation impact statement, it was assumed that 654,000 employers would be affected by the choice of fund legislation. Of these, 500,000 were assumed not to be covered by a workplace agreement. I checked in the break and we do not have any figures on the number of employees covered by a state award. The RIS, or the regulation impact statement, assumed that 4.8 million employees would be affected by the legislation.

Senator SHERRY (Tasmania) (7.33 p.m.)—Thank you for that. I was going to seek an explanation that you might be about
to give me anyway. I seek leave to withdraw amendment (1) on sheet 4295.

Leave granted.

**Senator SHERRY**—I move opposition amendment (2A) on sheet 4295 revised:

R(2A) Schedule 1, item 22, page 21 (after line 7), after section 32X, insert:

32XA Non-application of Part to small businesses

This Part does not apply to an employer who employs 20 persons or less.

Question negatived.

**Senator SHERRY** (Tasmania) (7.34 p.m.)—I move opposition amendment (2) on sheet 4295 revised:

(2) Schedule 1, item 22, page 17 (after line 14), at the end of section 32D, add:

(2) A fund ceases to be an eligible choice fund if it does not offer contributors 6 or more investment options including an ethical fund as defined in the regulations.

Part of the Labor Party’s announced policy on superannuation—one of the many policies we have in superannuation—was to introduce a minimum service obligation with respect to superannuation funds. I will not go into the detail of Labor Party policy, but one of our minimum service obligations is that an investment choice, as it is called, should be offered by all superannuation funds. Contrary to claims that there is no choice—that is not right; I have already talked about it in the context of membership of a fund—about 80 per cent of superannuation fund members have what is called investment choice. In other words, they can pick a different investment option from the standard trustees option. It is usually things like investment categories, international shares, Australian shares, bonds, cash—I would not recommend those two in the long term—and property. You can change the mix around, and that is what is called investment choice. This has been a major innovation to superannuation funds over the last 10 to 15 years. It is widespread. The last stats I looked at showed that about 80 per cent of fund members can pick from a menu different investment options.

It was with some interest that I noted that Senator Bartlett—probably more so than Senator Cherry—emphasised that this bill will lead to an increased take-up of ethical investment. That is not true. I think that is Senator Bartlett latching on to some desperate cover at the press conference to explain his party’s deal, which we are dealing with here tonight in the chamber. If we pass this legislation, it will have no impact at all on ethical investment. I notice that Senator Cherry has a bit of a smile. He knows that that is right.

**Senator Cherry**—I’ll read you the statement.

**Senator SHERRY**—You can have all the statements you like. There is not going to be a change in ethical investment as a result of this bill. The Labor Party has introduced via an amendment its minimum service obligation and one of those minimum service obligations is an investment menu—all funds should offer investment choice. Included in one of those options should be an ethical fund. We are actually making it compulsory to offer it. You do not have to take it up but we are making it compulsory to offer it. Compare that to this really weak and wimpy Democrat Senator Bartlett approach. I have been pretty tame in my criticism of other senators in this debate because it is late and it could be the last week before an election, but I really do think that this is one of the real furphies that the Democrats have used for cover in supporting this legislation. If the Democrats are keen on investment choice, as it is known, and keen on ethical funds then
here is their chance to make sure that every fund has to offer it. You do not have to take it up.

Senator Cherry—Every fund should do it.

Senator SHERRY—Yes, they should do it. That is what we are proposing through this amendment, Senator Cherry. We are making the funds offer it as an option. We are not forcing individuals to take it out, but if it is offered then we know that there will be a much better chance of a take-up, particularly as knowledge of ethical investment spreads. That is our rationale for this amendment. I hope the Democrats— it is probably a vain hope; the deal is done and wrapped up and we know there is never a deviation, even on sensible amendments like this that reflect the Democrat claim in their press release—will support it because I think it is sensible. It is Labor Party policy and it is a good way to go in terms of encouraging more ethical investment in this country.

Senator CHERRY (Queensland) (7.39 p.m.)—It is a pity that Senator Sherry did not listen to my speech in the second reading debate because he would have heard me read out in full the statement by George Pooley, the chairperson of Australian Ethical Investment Ltd, who was welcoming this legislation. I will quote it again for Senator Sherry’s assistance:

Australian Ethical Investment welcomes this change, which will enfranchise millions of Australians with respect to investment choice of fund. With the passage of this Bill, those Australians will be able to express their ethical concerns with their superannuation monies, as well as with their vote.

The key thing is that it is best to go and find an ethical investment fund rather than an option because what is ethical investment for one person might not be ethical investment for another. That is why it is more important to give people choice of fund, so they can go out and find a fund that is doing their business. I do not particularly want to see superannuation funds offer some sort of vague ethical investment token option. I want to see all superannuation funds move towards ethical investment. In the UK there was a significant change when a couple of big funds decided they were going to stop investing in particular forms of corporation. That had a significant impact immediately on shareholder behaviour, on fund behaviour and on company behaviour. That is the sort of approach we need in this country. It should not just be a token investment option. It is something we should be encouraging as a part of the general corporate behaviour of superannuation funds.

I do not know whether Senator Sherry noticed this last week, but the simple page disclosure will require superannuation funds to disclose the extent to which they offer socially responsible investment as an option. It will be there on the first page of their disclosure document. I am very pleased that Senator Murray managed to get that amendment to the simple disclosure page. It is also there in the amendments we have made to the Corporations Act in terms of requiring funds to disclose the extent to which they are engaging in socially responsible investment. We will continue to push that through a number of different channels. The combination of the simple page disclosure on ethical investment and the fact that choice of fund will be broadened gives people an opportunity to compare very quickly and very easily on their simple fee disclosure statement whether they are talking about social investment or not. That is more beneficial than this particular proposal.

There is an inherent contradiction in Senator Sherry’s contributions tonight, which I will highlight. There is a contradiction between the argument for lower fees and the argument for mandating six investment
choices. There is absolutely no question that the amendment which Senator Sherry has put before us will significantly increase the cost of running a fund. There is absolutely no question that that is what will directly flow from it. You cannot on the one hand say that you want the funds to charge lower fees and, on the other hand, increase the requirements on funds which will add to their fee structures. We have to be careful about the extra impost we put on superannuation funds which adds to their cost base. On that basis I do not think the Democrats will be supporting this amendment.

Investment choice is something that we should discuss further. I must say that the investment choices in the offers of the various funds that I have seen have been disappointing. As I said in my earlier contribution, it is true that 80 per cent of the funds do offer investment choice but, by and large, that investment choice is really the choice of different risk profiles rather than choice of investments. I am yet to find a fund which says they will invest all their funds in Australia, for example, which is an issue I have paid some significant public attention to. From that point of view we should recognise that investment choice at this stage is not delivering the sorts of outcomes which I certainly would have liked to have seen in terms of giving investors more control over where their superannuation moneys go—whether it is in Australia or in socially responsible investments or whatever.

From that point of view we will be opposing this amendment. We think that if we are serious about ethical investment we have to start making all funds do it. We should make all funds vote their shares at shareholder meetings. That is a matter we have dealt with in the Corporations Law area. We should make all funds start declaring what their investment policies are. They should not corral this in a token, socially responsible bit at the end of their options menu but make it a core part of their business. That is the approach the Democrats are taking by having socially responsible investment as part of the fundamental disclosure requirements of all funds. That way we allow people to start choosing between funds on the basis of exactly what they are delivering for their society.

**Senator SHERRY (Tasmania) (7.45 p.m.)**—I do not accept the argument about costs, Senator Cherry. I do not think that is right. If the person has gone for full ethical investment within the fund you can allocate capital to the account at no significant cost. The other problem, Senator Cherry, is this: under your choice model the consumer, if they know about ethical investment, will have to search that fund out.

**Senator Cherry interjecting—**

**Senator SHERRY**—Let me get to the point. Even though you have a limited choice model—it does not apply to state awards and there are limits with respect to the industrial instruments we have talked about—we are saying that every fund in Australia should offer a minimum level of service. It seems to us that they should offer a spread of investments including an ethical investment. The fund members will get a document which will talk in a reasonable amount of detail about that fund’s ethical investment option. Every fund member in Australia will get information about an ethical investment option. Under your model they will only get it if they seek it out, and we think our approach will be much more effective. You have indicated that you will not support our amendment, and I can anticipate that Senator Coonan will not support our amendment, so I will leave my remarks there. I think this is useful, and it is important that it is offered and that every person who reads their fund information knows that it is there for them to consider if they wish to do it.
Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (7.46 p.m.)—Senator Sherry is quite correct in anticipating that the government will not be supporting this amendment. From a personal perspective, I think there can be some merit in looking at how one can better inform people about ethical investments. There is a range of views about what ethical investments are and we certainly would not be in a position to do something about it on the run tonight. However, I do not know whether it has struck Senator Sherry yet that during the debate he appears to have been for more choice and then for less choice. He has been for exempting small businesses and those working in small businesses from choice. He is complaining that some do not get it and then he is carving out others. We are trying to provide a model that will give the best possible choice to the most people under the current arrangements.

I agree with Senator Cherry that the majority of funds that do not currently offer investment choice are probably corporate funds—and they tend to have lower fees and charges than retail and industry funds as the employer bears some of the costs—and the requirement to offer five investment options must force those funds, just by dint of activity, to bear additional costs associated with the selection and ongoing monitoring of investment managers. Invariably these costs will be passed on to members, so there are real difficulties in requiring this.

The choice bill tries to avoid a heavy handed, one size fits all regulation approach. We want to allow employees to choose a fund that is right for them and to have a robust framework of disclosure and education so that people have a better comprehension of the kinds of choices that they can make. If an employee is particularly focused, as some will be, on having a range of investment options available in their fund, choice will allow them to nominate a superannuation provider that can meet this need. I am sure that if there is a demand it will be met. That is the nature of competition. But, for tonight, mandated investment choice will merely impose additional costs without necessarily improving retirement incomes for fund members. I note the view of Mr Pooley, the chairperson of Australian Ethical Investment, who certainly seems to think that this legislation is a welcome addition for the kinds of investors that he might see at Australian Ethical Investment.

Question negatived.

Senator SHERRY (Tasmania) (7.50 p.m.)—I move opposition amendment (3) on sheet 4295:

(3) Schedule 1, item 22, page 22 (after line 8), after section 32Y, insert:

32YA Fund entry and exit fees

Where a fund sets an entry fee or an exit fee, the level of those fees shall be prescribed by regulation.

This relates to banning and regulating entry and exit fees—one of my favourite topics. The minister summed up her approach about disclosure and education. The Labor Party believes that disclosure and education are fine as far as they go, but we have to look at reality and be practical. There are some practices in the industry that are inappropriate or just plain wrong in the context of compulsory superannuation. I have mentioned two with regard to fees: one is entry and exit fees and the other is commission based selling with respect to the compulsory superannuation guarantee.

I made a prediction earlier. I will make another: whoever is in government—whether it is you, Senator Coonan, in a Liberal government, or a Labor government—at some future date we will be back here on the issue of commissions and exit fees. I am absolutely confident we will be back here on that
issue, because the market will not work. The market will not work to provide a fair and reasonable outcome and to stop rip-offs in this area. There is a strong argument that there is evidence that the market does not work properly in respect of competition. Where you have anti-competitive practice and conflicts of interest, you need to get in there and give it a good dose of regulation.

I do not say that lightly. I am a general believer in market forces and free enterprise, but let us be realistic: the basis of the compulsory superannuation market is not a free market. We compel people to save in super, we force them to save; otherwise the market would fail because the majority of Australians would not do it. That is why I get concerned when I hear from some in the industry—some of them are good friends of mine; we have these discussions on a friendly basis and they are representing their interests—when they talk about market forces: ‘Don’t touch the fees. Don’t do anything. Don’t regulate them in any way, shape or form. Market competition, it’ll be right.’ I point out to them that the majority basis of this industry is because of market failure. We compel people to save through super.

We have had a good talk about exit fees. They are a barrier. These products are still around today. It is not so much the existing products I am concerned about but the behaviour I outlined earlier. A fund, once it has got a new member and it has got all this money in—whether the individuals join that fund or they have been convinced by a planner—wants to keep the business. What is the best way legally to keep the business? Whack on an exit fee. That is how they used to keep business in a voluntary superannuation environment up until 10 or 15 years ago—compulsory super came in during 1987—but we have seen the slow decline of these heavy exit fee products. Some of them are still about; they are not a thing of the past. There are certainly those from that time still about. I notice there is one particular company—I am not going to embarrass it tonight—which features very prominently on that Senate select committee list. It has been selling products with heavy exit fees on super in the last few years. Exit fees in a compulsory super environment are unconscionable. They are a barrier. They erect substantial financial penalties in the thousands of dollars. The world of disclosure would be far simpler if they were prohibited as well. Sure, the cost would be amortised over the other fees. This barrier should be removed. Exit fees are anticompetitive. If we want to enhance and improve competition, then we would get rid of exit fees and we would get rid of commissions in certain circumstances.

Our amendment allows for entry and exit fees to be prescribed by regulation. The intention there is to allow for an entry and exit fee to cover the admin costs. I would trust the government to at least do a survey of what the admin costs are with respect to entry and exit fees and set an appropriate exit fee and get in there and give it a good dose of regulation. Don’t be afraid of it, Senator Coonan. The market is not supreme all the time. I am confident, and I make the prediction, we will back in the Senate—whether it is your government or ours—revisiting and regulating entry and exit fees and certain forms of commission payments some time in the next four to five years. It is such an obvious area for potential abuse and current abuse that we will have to do something about it.

I have one final point to make. Believe it or not, there is someone listening to this debate who has just sent me an email. He starts by saying, ‘Hi, Senator,’ and he has raised a serious point. I do not know the answer; Senator Coonan might know it. He is listening to the debate and he is concerned that the minimum standard requirements for a choice
fund, under clause 2 of the amending bill, refers to insurance with respect to death but makes no mention of disability insurance. He wants to know whether the amendment that has been moved in respect of the minimum condition provision of insurance also allows death and disability insurance as part of the insurance cover. Is it only death insurance or is it death and disability insurance? If that is covered, can you let me know as he wants some reassurance? It is nice to know we can help our constituents so quickly when they are listening in on the radio. Thank you very much. Hopefully the minister has got a positive answer for this query that has been emailed in the last 10 minutes.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (7.57 p.m.)—I think this is taking participatory democracy to extremes when somebody is running interference on the wireless. The insurance provision does extend to death—it is only death, isn’t it?

Senator Sherry—And disability.

Senator COONAN—No, just death. While I am on my feet, I do not propose to go over what I said earlier this evening with respect to exit fees as some of this debate is getting tedious and repetitious. However, I think the way you have framed this particular amendment, Senator Sherry—I hate to cavil at this and I would not be picky about it unless I really thought there was some basis to draw it to your attention—may be unconstitutional. Whether or not we are back here in four years, five years or 10 years time arguing about exit fees and commissions, the Constitution actually is king. Inconvenient though it may be, we still have to comply with the Constitution. The government will not be supporting this amendment, but in the spirit of collegiality I suggest you look at the constitutional point we are dealing with. Superannuation guarantee is levied under the taxing power of the Commonwealth. This amendment goes beyond the taxing power of the Commonwealth. It looks suspiciously like you are trying to put caps on a taxation power, but that is for another day. The government will not be supporting this amendment.

Senator SHERRY (Tasmania) (7.59 p.m.)—If we are elected to government, and I am always cautious about these things, Minister, you will be over here one day and we will be over there. Whether it is the next election—

Senator Coonan—I might get lucky and get another portfolio.

Senator SHERRY—That is up to you. It does not matter. The regulation of fees and charges will happen, and there are constitutional ways to do it and bring it about. Your response to the email query I had does concern me, believe it or not. I was a bit surprised, because the standard insurance in most super funds is death and disability. There are not many that do not have the disability provision. I thank the person who emailed in. We have raised the issue. I am a bit surprised. If it does not include disability, I think it should. I hope it will be revisited, because it is a standard form of the insurance that is offered by most funds. I am not going to move an amendment on that now. Hopefully, that issue can be revisited at a later date.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (8.00 p.m.)—Of course, the amendment requires life cover. It does not require disability cover, but it certainly does not preclude it. Our inquiries are that most funds, as Senator Sherry quite rightly identified, do have both. We are really only looking at what might be the minimum requirements for the tiny percentage of funds that may not have
this cover. Most do have it, and indeed most
will not be impacted.

Senator Cherry (Queensland) (8.01
p.m.)—The Democrats will be opposing this
amendment, but not because we do not have
sympathy with what Senator Sherry is rais-
ing. You cannot observe the superannuation
industry over any period of time and not
have concerns about exit and entry fees, par-
ticularly with any interest in portability. But,
at this particular point in time, the indica-
tions from industry—at least those that I am
receiving—are that, certainly with the newer
products coming on stream, exit and entry
fees are much less of an issue than they have
been in the past. And that is a point that
Senator Sherry would almost certainly ac-
knowledge.

We have to keep the pressure up to ensure
that that happens. I understand one of the
larger life cover companies last week offered
a product that actually had fees even lower
than most industry funds with no exit and
entry fees and no trailing commissions or
commissions. That is something to be nego-
tiated directly with the financial planner by
the person walking in the door. So there are
interesting things happening out there in the
market. I have some concerns about how the
market will develop over time and how pow-
erful the market will be, but the only way to
have a powerful market is to have a well-
formed consumer and a robust regulator, in
my view. They are probably the two things
that we have to focus on. ASIC have very
much got their act together now in keeping
an eye on these issues, but we have to make
sure that they have the tools to do what they
need to do.

At this stage, the Democrats are prepared
to go with monitoring and disclosure as the
best ways of dealing with these issues, but
we do not rule out that at some future time,
as Senator Sherry had suggested, the Senate
may need to return to these issues. The gov-
ernment itself acknowledged that in its port-
ability paper released last year. So we do not
support formal regulation for exit and entry
fees, but I do not rule that out for all time. If
disclosure and monitoring prove not to be
adequate to force market change in these
practices, we will have to come back to look-
ing at these sorts of bans. I am always a bit
cconcerned about regulating fees, because the
minute you regulate a fee that becomes the
fee. That is always a difficulty with regula-
tion. At this stage we are not prepared to
support the amendment, but who knows
where we will be in a couple of years time.

On the issue of insurance, I understand
one of my colleagues received a similar
email from a constituent listening to the de-
bate tonight about the issue of disability in-
urance. It is an interesting point, and I hope
the government considers that issue in de-
veloping the minimum standards. Total and
permanent disability is an issue that people
do not worry about until the last minute, and
funds do provide that. If we did an audit of
funds today, as Senator Sherry has sug-
gested, virtually all that provide death bene-
fits I am sure would provide total and per-
manent disability as well. That is something
we should consider, possibly for a future
amendment.

Senator Sherry (Tasmania) (8.04
p.m.)—The difficulty with revisiting exit
fees in the future is that we are not regulating
the level of fee but regulating the type of fee.
There is a difference there—it is in respect of
exit and entry fees.

Senator Cherry—The level of those fees
shall be prescribed.

Senator Sherry—You could say no
exit and entry fees at all—absolutely none.
We accept that funds may wish to charge an
administrative cost, which is not a barrier. I
think we will have bad behaviour in this
area. I think it is obvious that a person or an institution, once they have convinced people to put money in their account, will want to keep it and the best way is to erect an exit fee. It is an obvious strategy. I am sure there are people sitting in those big financial institutions at the moment—some of them are probably listening to this debate—who are overjoyed with the passage of this legislation and are already working out ways to rip off the consumer and keep people locked into their particular products. They are already doing it. You can be damn sure they are. This is why exit fees were invented. We have had experience with exit fees. They should not apply.

Let us say we do come back and ultimately regulate exit fees in some way, shape or form. The problem is that you cannot retrospectively reverse the impact on people who have been burnt by exit fees in a product. They are locked into a product. Even though the Labor Party will be regulating and banning exit fees, we will not be applying it retrospectively to products of the past. We do not think we could do that. So some people will get burnt. As far as the Democrats are concerned, that is likely to happen. Senator Cherry admits he knows something about exit fees, but retrospectively—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Sherry, I am feeling a little superfluous. If you could direct your admirable contribution through me, I would appreciate it.

Senator SHERRY—I am sorry, Mr Temporary Chairman. You were a member of the Senate Select Committee on Superannuation at some time, weren’t you?

The TEMPORARY CHAIRMAN—Yes, indeed.

Senator SHERRY—I should not be neglecting you with my remarks, and I will not. The problem is, of course, that some people will get burnt. There will be contractual obligations. Even where choice does not apply and is not offered, it will be possible for the financial provider to attach an exit fee so that when a person leaves a particular workplace they cannot transfer out of the fund.

This will happen. I am very confident in predicting it will happen. I am sure there are people planning to do it at the moment. It is unethical. It should not occur. It is a case where regulation should apply, but the numbers are such that unfortunately tonight we will not prevail. I would have thought in terms of good legislation that we should try and anticipate this sort of thing. We have had experience. The Democrats in their very weak and wimpy regulatory approach—sorry, Mr Temporary Chairman, that is not a reference to you; that is a reference to the Democrats—

The TEMPORARY CHAIRMAN—I had no doubt that it wasn’t me.

Senator SHERRY—The Democrats had a very weak and wimpy regulatory approach in terms of fees and charges. The amendment should be passed; it will not be. I accept reality, and we will move to the final vote on the bill.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (8.09 p.m.)—I move:

That this bill be now read a third time.

Senator GREIG (Western Australia) (8.09 p.m.)—In closing, I want to make a few remarks to those people for whom aspects of the Superannuation Legislation Amendment (Choice of Superannuation
Funds) Bill 2003 is incredibly important, and it would be remiss of me not to do so. Senators would not be surprised by me drawing their attention to the fact that I have for some time been championing this cause. I do not for a moment claim to be the key person behind the changes we are experiencing tonight in terms of going some way towards recognising same-sex couples, but I do not think it is unreasonable of me to suggest that I have played in some part a key role, at least in the last four or five years, in where we find ourselves now.

In about 1994, I found myself in Melbourne where I was contacted indirectly by a person called Greg Brown. I had not met him before, but we agreed to meet and have dinner in Brunswick Street, Fitzroy. He wanted to tell me about his particular circumstances. As I remember it, he was in a same-sex relationship for some seven years. His partner had died from, I think, an AIDS related illness and he had been able to obtain the reversionary pension from the superannuation scheme of his late partner. Shortly after that, he took his case to the Administrative Appeals Tribunal and ran the argument that he ought to be entitled to his late partner’s superannuation benefit.

Justice Deirdre O’Connor from the AAT ruled—with regret, I note—that his claim could not be upheld because a same-sex relationship could not be regarded in the eyes of the AAT as a marriage-like relationship. He was disadvantaged, discriminated against and offended by that outcome and decided to begin a community campaign which he called ‘Homo De Factos’. The result we have before us tonight is, for the first time, the elimination of most of the hurdles that many surviving same-sex partners have found in trying to demonstrate a previous relationship with the deceased and, more importantly, all of the death taxes that have applied to lump sum payments.

In a strange way, that is not what Mr Greg Brown was asking for; he was in different circumstances, trying to achieve the reversionary pension of his partner. It was nonetheless his initial spark of activism and community campaign which found itself evolving into broader campaigns amongst lesbian and gay lobby groups throughout Australia and with the Australian Council for Lesbian and Gay Rights, in which I served a three-year term as one of its co-conveners and spokespeople.

I have found it very difficult in this place to change attitudes and, more importantly, change laws, but tonight we see some evidence of change. I would like to place on the record my thanks to the minister for her part in helping bring about the changes we now have and to those coalition backbenchers who spoke out in their party room in support of this reform. I would particularly like to thank my Democrat colleagues who have backed me, for the most part, to the hilt in my strategy to bring about this result. It is not a perfect result. It does not go the whole hog. It does not specifically recognise same-sex couples. It does not change the definition of ‘spouse’, but it goes far enough to remove the two most significant and cruel elements of discrimination.

I would also like to thank my friend John Davey, who, although no longer a member of the Democrats, was for a time a controversial and colourful character on our administrative wing, the national executive, and some years ago played a crucial role in helping bring the lay party towards the strategy and policy position which we have seen for the most part in fruition tonight. So I would like to mark the passage of the super choice legislation—much of which I find arcane and the explanation of which I leave to my colleague Senator Cherry, although I certainly understand the key human rights aspects of it in terms of lesbian and gay citizens—in the
memory of the work that was started by Greg Brown. I offer my further hope that we will see real and more comprehensive reform in this area and the many other areas of Commonwealth discrimination as attitudes change and law-makers follow those attitudes.

Question agreed to.

Bill read a third time.

CORPORATIONS (FEES) AMENDMENT BILL (NO. 2) 2003
CORPORATE LAW ECONOMIC REFORM PROGRAM (AUDIT REFORM AND CORPORATE DISCLOSURE) BILL 2003

In Committee
Consideration resumed from 21 June.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that opposition amendments (36) to (39) and (64) on sheet 4216 revised be agreed to.

Senator CONROY (Victoria) (8.15 p.m.)—I think I was just finishing my speech on these amendments yesterday. I note that Senator Murray is not here yet, so we may need to keep talking before we put this to a vote.

The TEMPORARY CHAIRMAN—I am sure you will not find that difficult, Senator Conroy.

Senator CONROY—I appreciate your kind remarks, Mr Temporary Chairman. The issue we were talking about was multi chairs. I see my stalkers are with us again tonight! It is good to see them coming along to watch the completion of it. What Labor is seeking to do with regard to the issue of multi chairs is not to ban any director from holding two positions. It is saying that, if they want to hold two chairs, the directors of the second company of which they are seeking to become the chair should have a chance to participate. If the shareholders choose to vote to have two chairs of top 500 companies then they are entitled to make that decision. So this is not attempting to regulate the number of chairs; it is attempting to say that shareholders should be empowered. I see that our colleague Senator Murray has joined us, so I will happily defer to the vote.

Senator Murray interjecting—

Senator CONROY—There are a few things that I forgot to mention in my contribution. I am happy to continue. I think it is important, particularly as Mr Reilly is in the gallery, that I should discuss his golf swing and handicap, which are, frankly, an embarrassment. He is a complete bandit. I know that Senator Murray is very keen on the issue of shareholder participation, so I am hoping that my speech can convince him that empowering shareholders is a good thing. I appear to have convinced him.

Question agreed to.

Senator CONROY (Victoria) (8.18 p.m.)—by leave—I move opposition amendments (40) to (44), (46), (47) and (49) to (57) on sheet 4216 revised:

(40) Schedule 8, page 227 (after line 5), before item 1, insert:

1A Section 9
Insert:

voting authority means, in respect of an entity, that the entity:
(a) is entitled to attend and cast a vote;
(b) is entitled to appoint a proxy to attend and cast a vote for that entity; or
(c) has the power to direct another entity to vote in the way in which the first mentioned entity directs,
at a meeting of a listed corporation’s members where the corporation is listed on the Australian Stock Exchange. An entity does not have voting authority if the entitlement in paragraphs (a) or (b) arises solely because another entity directs the first mentioned entity to vote in the way in which the second mentioned entity directs. An exercise of voting authority includes considering a resolution and not voting on that resolution but does not include not considering a resolution and not voting on that resolution.

(41) Schedule 8, page 227 (after line 5), before item 1, insert:
1B Section 9
Insert:

voting disclosure means, in respect of voting policies and voting records, making the policies and records publicly available in printed or electronic form where electronic form includes publishing on the Internet on the website of the relevant entity.

(42) Schedule 8, page 227 (after line 5), before item 1, insert:
1C Section 9
Insert:

voting policy means, in respect of an entity with voting authority, a clear, concise, effective and up-to-date statement of the basis on which the entity exercises or, if applicable, does not exercise, its voting authority, including, without limitation:
(a) the circumstances in which the entity will exercise its voting authority for or against the management of listed corporations;
(b) the manner in which the entity exercises its voting authority in relation to material resolutions (as defined in the regulations);
(c) the currency date of the policy; and
(d) any other matter prescribed by the regulations.

(43) Schedule 8, page 227 (after line 5), before item 1, insert:
1D Section 9
Insert:

voting record means a record, produced annually, that summarises the manner in which an entity exercised its voting authority for the relevant year and must include:
(a) for each listed corporation for which the entity has exercised its voting authority in respect of at least one resolution during the relevant year:
   (i) the corporation’s name;
   (ii) the symbol used in the prescribed financial market for the corporation;
   (iii) the member meeting date;
   (iv) a clear and concise description of each resolution that was voted on by members;
   (v) whether the resolution was proposed by the management of the listed corporation or by a member;
   (vi) whether the entity voted for or against the resolution;
   (vii) if the entity did not vote for or against the resolution, whether the entity considered the resolution but did not vote or did not consider the resolution and did not vote;
   (viii) whether the entity voted for or against the management of the listed corporation; and
(b) for all the listed corporations in respect of which the entity has voting authority, the total number of resolutions for which the entity:
   (i) exercised its voting authority;
(ii) did not exercise its voting authority;
(iii) voted for a resolution;
(iv) voted against a resolution
(v) considered a resolution but did not vote
(vi) did not consider a resolution and did not vote;
(vii) voted for the management of the listed corporation;
(viii) voted against the management of the listed corporation; and
(c) any other matter prescribed by the regulations.

(44) Schedule 8, page 231 (after line 9), after item 16, insert:

16A At the end of section 601FC
Insert:

(7) If a responsible entity has voting authority, then the responsible entity:
(a) should exercise that voting authority in every case where the responsible entity has voting authority; and
(b) subject to subsection (8), must maintain a voting record; and
(c) must establish a voting policy.

(8) A responsible entity is not required to maintain a voting record if the entity does not exercise its voting authority over the period that would otherwise be covered by the voting record.

(9) If a responsible entity is required by subsection (7) to establish a voting policy then the responsible entity must make voting disclosure.

(46) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

18 At the end of section 43
Add:

(8) If a life company has voting authority, then the life company:

(a) should exercise that voting authority in every case where the life company has voting authority; and
(b) subject to subsection (9), must maintain a voting record; and
(c) must establish a voting policy.

(9) A life company is not required to maintain a voting record if the life company does not exercise its voting authority over the period that would otherwise be covered by the voting record.

(10) If a life company is required by subsection (8) to establish a voting policy then the life company must make voting disclosure.

(11) A contravention of subsection (8), (9) or (10) is prohibited by the regulations.

(47) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

19 At the end of the schedule
Add:

voting authority has the same meaning as in the Corporations Act 2001.
voting disclosure has the same meaning as in the Corporations Act 2001.
voting policy has the same meaning as in the Corporations Act 2001.
voting record has the same meaning as in the Corporations Act 2001.

(49) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

Superannuation Industry (Supervision) Act 1993
20 Section 10
Insert:

voting authority has the same meaning as in the Corporations Act 2001.

(50) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

21 Section 10
Insert:

voting disclosure has the same meaning as in the Corporations Act 2001.
(51) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

22 Section 10
Insert:

voting policy has:

(a) the same meaning as in the Corporations Act 2001; or

(b) where any part of a voting policy relates to the voting records of an investment manager, that part of the voting policy will be a clear, concise, effective and up-to-date statement of the basis on which the entity is influenced by the voting records of an investment manager in choosing an investment manager and such a statement will include:

(i) the extent to which the choice of investment manager is influenced by this paragraph; and

(ii) the currency date of that part of the policy; and

(iii) any other matter prescribed by the regulations.

(52) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

23 Section 10
Insert:

voting record has the same meaning as in the Corporations Act 2001.

(53) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

24 At the end of paragraph 52(2)(f)
Add:

(v) if applicable, the voting records and voting policy of the entity and, if the entity has engaged an investment manager, the voting records of entity’s investment manager that relate to investments made on behalf of the entity;

(54) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

25 At the end of paragraph 102(1)(a)
Add:

(iii) to provide the voting records of the investment manager, or that part of the voting records of the investment manager, that relate to investments made on behalf of the entity;

(55) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

26 After section 105
Insert:

105A Duty to exercise voting authority
(1) If the trustee of a superannuation entity, other than a self-managed superannuation fund, has voting authority, then the trustee:

(a) must exercise that voting authority in every case where the trustee has voting authority in relation to material resolutions; and

(b) should exercise that voting authority in every other case where the trustee has voting authority; and

(c) must maintain a voting record.

(2) If an investment manager has voting authority, then the investment manager:

(a) must exercise that voting authority in every case where the investment manager has voting authority in relation to material resolutions; and

(b) should exercise that voting authority in every other case where the investment manager has voting authority; and

(c) must maintain a voting record.

(3) The trustee is guilty of an offence if the trustee contravenes subsection (1). This is an offence of ordinary liability.

Maximum penalty: 100 penalty units.

(4) The investment manager is guilty of an offence if the investment manager contravenes subsection (2). This is an offence of ordinary liability.
(5) In this section, *material resolution* has the same meaning as in the *Corporations Regulations 2001*.

(56) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

27 After section 105
Insert:

**105B Duty to establish a voting policy**

(1) If the trustee of a superannuation entity is:

(a) required by section 105A to maintain voting records; or

(b) engages an investment manager and that investment manager is required by section 105A to maintain voting records;

then trustee must establish a voting policy.

(2) The trustee is guilty of an offence if the trustee contravenes subsection (1). This is an offence of ordinary liability.

Maximum penalty: 100 penalty units.

(57) Schedule 8, page 231 (after line 22), at the end of the Schedule, add:

28 After section 105
Insert:

**105C Duty to disclose voting records and voting policies**

(1) If a trustee of a superannuation entity is required by sections 105A and 105B to maintain voting records and establish voting policies then the trustee must make voting disclosure at least annually.

(2) The trustee is guilty of an offence if the trustee contravenes subsection (1). This is an offence of ordinary liability.

Maximum penalty: 100 penalty units.

These amendments implement Labor’s policy to increase shareholder activism in Australia. In Labor’s view institutions put pressure on companies which far outweighs the pressure of individual shareholders. That is why Labor’s amendments require institutional investors to disclose how they vote in relation to the listed companies in which they invest. With most Australians having an exposure to the share market via their superannuation, the importance of shareholder activism in corporate governance becomes clear.

Labor takes the view that the exercise of ownership rights by all shareholders, including institutional investors, should be facilitated by government and supported by the regulatory framework. The United States have taken the lead on this issue. In the US the Department of Labor is the relevant authority under the Employee Retirement Income Security Act, or ERISA, in relation to US private sector pension plans. The department takes the view that the vote is an asset of the plan, which needs to be managed by those plans with the same care and diligence as other plan assets. A policy statement from the department states that voting rights attached to equity investments should be exercised on issues ‘that may affect the value of the plan’s investment’.

Recently the Securities and Exchange Commission, or SEC, adopted rule amendments that require mutual funds to disclose their proxy voting policies and the actual proxy votes cast. This rule comes into effect on 31 August this year. I reiterate that the original decision to introduce mandatory voting for private sector pension plans was a Ronald Reagan Republican initiative. This is not some left-wing conspiracy. Ronald Reagan Republican policy introduced the compulsion to vote your shares for pension plans. It is quite extraordinary that Australia, some 10 or 15 years later, is still having this debate. I hope that the government will accept that this amendment is important and worth while. I hope that the government are willing, along with the Democrats, to support this.
The SEC in the last 12 months has introduced this disclosure rule. Let us make it clear again: the SEC has introduced this while George Bush Jr is the President. Again, a Republican administration has introduced this. Therefore, it is extraordinary that Australia continues to lag behind. But this is the opportunity to grasp the nettle. This is the opportunity for the Australian parliament to adopt the world’s best practice that is in the US. This is a government that is very keen on world’s best practice. It wants world’s best practice in every other sector. Why are we not picking up world’s best practice in the corporate governance initiatives out of the US? They are groundbreaking. They have led to a substantial shift in participation in the US.

As I said, this rule that the SEC have just introduced comes into effect on 31 August this year. According to an article by Stephen Davis in London’s Financial Times newspaper, ‘the US rule means that the secrecy in relation to how the US institutions vote will stop on 31 August 2004’. That is how he describes it. Conflicts of interest which flourished uncontrolled will be put under the spotlight. Why will conflicts be exposed? According to the Financial Times article, if funds know that voting records will be exposed to investors, the funds will be scrupulous in voting in the clients’ interests rather than to further commercial objectives. The voluntary statement of principles which is used in the UK has been criticised on the grounds that, because it is not part of the law, it is impossible to overcome the web of conflicts of interest in the industry. Similar considerations apply in Australia. The question is: will the Howard government support Labor to stop the secrecy and overcome the web of conflicts of interest which exists in Australia? This is another big test.

We have seen some pretty bad public policy in recent times. We have seen IFSA winning hand over fist wherever it wants. This government has allowed IFSA to make the running.

Senator Ian Campbell interjecting—

Senator CONROY—Certainly Richard Gilbert deserves his money from IFSA.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Mr Gilbert.

Senator CONROY—Sorry, Mr Gilbert deserves his money from IFSA because he is doing a great job. He knows he can phone Senator Campbell and have breakfast with him at the Hyatt on the quiet. You have been spotted there; I spotted you there. He knows he can quietly call Senator Campbell, even though he is the minister for roads and not much else. Even though he has not got any responsibility—

Senator Ian Campbell—I’m also the minister for local government and territories. That’s an insult to Norfolk Islanders, and the Temporary Chairman would agree.

The TEMPORARY CHAIRMAN—I agree and would feel quite disturbed if something were said against that fine band of people.

Senator CONROY—We know how this operation works. It is not even his portfolio. He has run roughshod a couple of times over poor Parliamentary Secretary Cameron. Parliamentary Secretary Cameron has made a number of deals. He has met with members of the Senate Economics Legislation Committee. Senator Murray is aware of this. Parliamentary Secretary Cameron has been pulled aside by Senator Campbell, who is still trying to run the portfolio even though he has no legal responsibility for it.

We know what goes on. We know that IFSA have had a number of wins, and here is another test today. Will this government do IFSA’s bidding? Even though I have described IFSA’s desire to not reveal how much
they charge their customers—disclosing the total cost of fees to their customers is like a wooden stake to a vampire—I promise you that this one IFSA are determined to defeat. IFSA have scoured the world for arguments to defeat this. Unfortunately, the rest of the world is coming our way. I say to IFSA: you may win, you may have the government in your pocket again, but you will not win this one in the long run. Shareholders want these powers; shareholders want this information. You may have a win today—I hope not; I hope the government accepts this—but ultimately parliament will catch up with you, and the shareholders and the people whose money you are managing will catch up with you—

**The TEMPORARY CHAIRMAN**—Are you saying they will catch up with me, Senator Conroy?

**Senator CONROY**—Catch up with you.

**The TEMPORARY CHAIRMAN**—What do you mean by ‘catch up with you’?

**Senator CONROY**—Policy wise it will catch up with IFSA.

**The TEMPORARY CHAIRMAN**—You said ‘you’. I thought you meant me.

**Senator CONROY**—No, ‘you’ as in IFSA.

**The TEMPORARY CHAIRMAN**—Perhaps you should refer your remarks to me.

**Senator CONROY**—I am sure you can now admonish me for not addressing the chair. In fact I was referring to IFSA when I said ‘you’.

**The TEMPORARY CHAIRMAN**—I am glad you cleared that up. Senator.

**Senator CONROY**—Thank you for drawing that to my attention, Mr Temporary Chairman. This is a test: will the government back powerful institutional investors and their lobby groups and continue to allow institutional investors to act behind closed doors without the disinfectant that full disclosure provides? Exposing conflicts of interest is only one of the advantages of the requirement to disclose voting records. The second advantage of requiring institutional investors to disclose their voting records—and this is according to the *Financial Times*, one of the premier economic journals in the world—is ‘it would expose those funds that slavishly endorse every corporate management position’. And this is a key issue for the Australian market.

I am not aware of any single board resolution which was defeated during the last AGM season. A couple of resolutions were withdrawn, it is fair to say. A number of people deserve a lot of credit. Even though I am giving IFSA a hard time, members of IFSA deserve credit for their participation in rolling Rupert Murdoch and in rolling Gerry Harvey. But in general, other than those two instances, every single resolution put up by a board to the shareholders was passed. If that is not 100 per cent tick-a-box, I do not know what is. So when the argument comes that some of these amendments will lead to simply ticking a box or getting bad outcomes, I have to say that 100 per cent of resolutions passed. That sounds to me pretty much like a tick-a-box approach to what goes on by fund managers. It is happening right now. Do we seriously believe that every resolution put up by management in the last AGM season in Australia was acceptable?

Whilst an open dialogue between a fund manager and a company prior to an AGM may produce outcomes and avoid the need for public disagreement, there are instances where Australian investors have simply failed to act. The best example of institutional apathy occurred at the Boral AGM in October this year, where institutional investors voted in favour of a board resolution that removed the right of 100 shareholders to put
a resolution for debate at the AGM where the resolution relates to the company constitution. What a massive blow to shareholder democracy. And what happened? Every institution lined up and voted for it. Notwithstanding that the policies they enunciated did not support that position, every one of them voted for it. So they had one stated policy on corporate governance and supporting shareholder democracy but, when the rubber hit the road—when it came to a test of whether they were voting, firstly, in an informed way and, secondly, whether they were going to vote in support of shareholders’ interests—no, they backed the board.

This outcome highlights the tick-a-box mentality that currently exists. The largest fund managers in Australia voted in favour of a resolution that eroded shareholders’ rights, because that is what the board asked them to do. Culturally, many institutional investors have a tick-a-box mentality: if management are in favour of the resolution, it must be okay. The third advantage of disclosing voting records—again, according to the Financial Times; another left wing conspiracy on our hands, Senator Murray—is that the requirement to disclose voting records will provide ‘an X-ray picture of how funds behave as owners.’

Labor also want to give Australian shareholders an X-ray picture of how funds behave. We believe that the market should know how institutional investors vote. This X-ray will also assist socially responsible investors who will be able to see whether a fund takes into account issues such as the environment or labour standards. Why should institutional investors, which control billions of dollars of other people’s money, be allowed to operate in secret? Australia is being left behind.

It is not just the United States that has decided to shine the spotlight on the activities of institutional investors. Last month the Canadian securities administrators announced that nearly identical laws to the US rules are to apply from next year. According to the Financial Times the UK is considering similar proposals. The OECD principles of corporate governance, which were released earlier this year, call for disclosure of how institutional investors exercise their ownership rights. The OECD report states:

For institutions acting in a fiduciary capacity, such as pension funds, collective investment schemes and some activities of insurance companies, the right to vote can be considered part of the value of the investment being undertaken on behalf of their clients. Failure to exercise the ownership rights could result in a loss to the investor who should therefore be made aware of the policy to be followed by the institutional investors.

Accordingly, Labor believes that fund managers in Australia should disclose their voting records and voting policies.

This is a global issue, and the Howard government is fighting against the global tide. This is the second time that the Howard government has had the opportunity to pass legislation that would require the disclosure of voting records by fund managers. Let us not forget that the first time Labor introduced amendments was in March 2003. Since then we have consulted extensively with industry and we have released revised amendments. Today is the second time that Labor has attempted to bring Australia into line with international best practice in relation to proxy voting by institutional investors. I will sit down at this point as I am sure Senator Murray would also like to contribute. I have a number of other points I would like to make before I conclude, but I will pass over to Senator Ian Campbell.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (8.34 p.m.)—I will
put the case of the government in relation to
this raft of amendments. Firstly, this gov-
ernment have not sought to replicate world’s
best practice in this area at all. In fact, we
have sought to look at the Australian situ-
ation, look at the challenges we face as a na-
tion, look at our capital markets and look at
the unique circumstances of our investment
community, with its very high number of
retail investors. We have a significant institu-
tional investment community for a country
our size. You have to give credit where it is
due to Mr Keating for introducing compul-
sory superannuation when he was Treasurer.
That has ensured that we have had signifi-
cant funds moving into institutions—or pen-
sion funds, as they are called in the US—so
we have very high levels of private invest-
ment in the markets.

There are significant differences between
our marketplace and the marketplace in the
City of London, for example, which Senator
Conroy seems to have become a recent con-
vert to. There is a very big difference with
the US market, where there are individual
corporations laws and business laws spread
across the 50 states; the Securities and In-
vestments Commission, based in Wash-
ington; and a whole range of different regula-
tory regimes spread throughout the states. I
think the biggest registry is actually in Dela-
ware, for reasons that were probably bad
reasons 20 years ago but are generally good
reasons now. They also have the different
stock exchanges. You have an entirely differ-
sent situation to that which you have in Aus-
tralia.

We have not sought to say there is world’s
best practice. There are different situations in
Europe, in Asia, in the US and in Great Brit-
ain. What we have sought to do—and we
have been quite successful, if you look at the
way the Australian market has performed,
particularly over the last decade—is some-
thing a little bit bolder than have world’s best
practice: we have sought to define world’s
best practice. We have done that in Australia
in many areas. One of those areas is the Fi-
nancial Services Reform Act, which has led
the world in terms of financial services regu-
lation, with the sort of information that is
available to investors and that is required to
be given to potential investors by advisers. In
many areas we have in fact achieved the goal
that I set for us: to define world’s best prac-
tice.

In this area we are assisted by one of the
world’s best stock exchanges: the Australian
Stock Exchange. We are supported by a
range of institutions—which I claim have
grown up because of this government’s very
active approach to getting it right and doing
a lot of policy work in this area—such as the
Securities and Derivatives Industry Associa-
tion, which has grown up over recent years
since the demutualisation of the Stock Ex-
change; IFSA, which Senator Conroy was
referring to in semiderogatory terms, because
I know he has a lot of respect for a lot of the
work it does; the Australian Shareholders
Association, to their great credit; and a range
of other organisations that have really devel-
oped solid participation by their member-
ships and engaged in what is, I think, gener-
ally a very well-informed debate about cor-
porate governance and corporate regulatory
issues that we have here in Australia.

Most other jurisdictions would in fact be
very jealous of what we have achieved in
institutional voting in Australia. I am in-
formed that the voting levels for members of
IFSA have hit 92 per cent over the last year
or so. Senator Conroy is saying that we need
to bring in a raft of new law that of course
will create a cost and a compliance burden. I
think Senator Conroy’s badly thought out
amendments relating to reporting require-
ments will of course add cost to the institu-
tions. Who will bear the costs of those insti-
tutions? It will in fact be the investors—the
mums and dads—the people who rely on their superannuation investment. They will have diminished returns because of this onerous new raft of regulation that Senator Conroy wants to impose on an industry that has an unrivalled record throughout the markets of world capitals—a 92 per cent voting record of all company resolutions, a significant achievement by Australian institutional investors.

What astounds me, particularly bringing forward the amendment this week, is that we have the Australian Labor Party saying, ‘Let’s force institutions to disclose how they vote, disclose their voting policies, disclose their voting record,’ when their new star recruit for the Labor frontbench steadfastly refuses to say how he voted. Senator Abetz in this very chamber only a few days ago asked: ‘Could you please do a freedom of information request and I’ll ensure that the AEC gives you all your voting records?’ We have the next person to get promoted to the Labor frontbench in Peter Garrett absolutely refusing to say how he votes, refusing to let the Australian people look at his records, refusing to let the shareholders and the Australian Labor Party and their paid up subsidiaries in the trade union movement know. Yet Senator Conroy has the gall—I think he is probably embarrassed—to come in here and say, ‘Let’s make it law for every institution in Australia to show their voting records and their voting policies and how they vote.’

If Mr Garrett wants to abide by Labor policy, which he says he will do, and chuck out a decade worth of baggage—stop logging, stop industry, close it down, oppose the United States alliance, oppose defence policy—I suggest that he now comply with Labor policy on compulsory voting, comply with Labor policy on disclosure of your voting record and voting policy and come clean today. Senator Conroy will join with me and ask Mr Garrett to comply with Labor policy, as clearly enunciated in these regulations. And I can only take Labor seriously on these amendments if Senator Conroy will join me in asking for that.

Obviously these amendments are well intentioned. The government has always said that institutional investors should be voting where it is in the interests of their members to do so. In fact, that is exactly what the US seeks to do. Senator Conroy comes in here and says, ‘It’s law that you have to vote in the US.’ Of course it is not. The Employee Retirement Income Security Act sets out the fiduciary responsibilities and, effectively, says that pension plan officials have to weigh up whether voting or not voting is to the benefit of the members of their fund, and that is quite appropriate. That is exactly what institutional investors in Australia have to do. It certainly does not specifically mandate voting.

What Senator Conroy will not tell you is that all of these wonderful rules, passed under the administration of that wonderful United States President, were the very rules that applied at the time of the Enron collapse, the WorldCom collapse and all of the other major collapses. That is one of the reasons we are here tonight. All of those rules that applied—and Senator Conroy was giving credit to the Reagan Republicans for their measures—were in fact sound measures, because they did not force people to vote. Senator Conroy is taking the Reagan Repub-
lican initiative and saying, ‘Here is a responsibility for you as a fiduciary.’ He is making it quite clear that you have to weigh up ‘Do you vote or don’t you vote? Does voting impose a higher cost on your investors or your plan members than not voting’ and make a sensible decision. That is what the Australian government says.

Senator Conroy says that he aligns himself with the wonderful initiative of the Reagan Republicans, but he does something that Ronald Reagan would never have done nor one of his Republicans. He knows that you need to weigh these things up. You do not need grandma in Canberra saying, ‘You have to do this to be good.’ You do not need nanny saying, ‘Nanny knows best or Canberra knows best,’ to do this. The proof of the pudding is in the eating: the members of the Australian institutions have achieved such significant results in terms of their own voting record. Of course, that will be monitored closely. This is certainly an area that does not need the heavy hand of a centralist ‘Nanny knows best’ Labor initiative in the Senate to force people to do this, which will have the clear effect of just adding cost and diminishing returns to the investors who rely on their superannuation investments.

Senator CONROY (Victoria) (8.44 p.m.)—I rise to respond to that diatribe. I have a number of points to make. Senator Ian Campbell, you mentioned the Shareholders Association. I want to follow that up first. I am authorised to stand before you today and indicate on behalf of the Australian Shareholders Association and Stuart Wilson, their CEO, that they strongly support this measure. Senator Campbell, I hope Mr Gilbert and IFSA paid for breakfast if those are the best lines they could give you after scouring the world. You have had Treasury scouring the world; we know that they have been hunting around in Paris looking for arguments against this. We know that you have been looking around for some decent arguments to oppose this amendment. We know that IFSA have scoured the world—and that was the best they could slip you on a piece of paper? I hope they paid for breakfast, because that was rubbish.

Just to get the record absolutely straight I will give you the name and phone number of the official in the US administration that introduced the Employee Retirement Income Security Act, and you can have a chat to him. His name is Bob Monks. He is a great bloke. He is a Reagan Republican and proud of it. You may ask, ‘Why would he bother talking to a Labor senator from Australia?’ Well, I will give you his phone number and an introduction to him, and you can have a conversation about how this law works and how he intended it to work. He will tell you in no uncertain terms that this, combined with the SEC rules, mandates it. They have to vote. He will give it to you in black and white. The Ronald Reagan Republican appointee to run the Department of Labor, in charge of this area, will tell you exactly what this has done and how it is done. I do not want to put it on the public record but I will give you his phone number. Feel free to give him a ring. He will give you a run-down on this legislation in the US so that we can perhaps get some education going for you.

IFSA’s claim that 92 per cent of their members vote at AGMs beggars belief. It is a debate I have had with Mr Gilbert and IFSA for some time, and I am sure they are embarrassed that you have dragged this hoary old effort up again. Corporate Governance International do a survey every year—as I think you are aware, Senator Ian Campbell. As we all know, Groundhog Day is approaching again on 28 June. Senator Murray, I have the exact date, as you always like to correct me. Back in 1998 we stood here and had a debate about participation of shareholders. Back then the voting record of institutions was 37
per cent. We introduced a range of measures and hoped that they would be enough. We hoped that, after six years at least, we would see a substantial increase in the level of voting by institutions in this country. After six years of practice we have reached the staggering level of 44 per cent. That is an increase of one per cent a year. By the time you and I have both left parliament, Senator Murray, we might reach the US level, the UK level and probably the Canadian level, given that they are introducing some of these measures as well. By the time we have collectively left parliament—even you, Senator Campbell, may have passed on—we may begin to approach that level if the one per cent increment continues. That is not good enough for Australian shareholders.

Senator Ian Campbell, the unique thing about your argument and your argument on behalf of IFSA is that they are trying to have it both ways. They tell you, ‘There’s no need for this because they are already voting.’ Then they tell you that there is going to be a massive cost if you make them vote. What I do not understand is where the extra cost is coming from if they are already voting. They cannot have it both ways. If they have already got the systems in place and they are voting 92 per cent of the time, on what basis will they be charging fees if they are mandated to vote 100 per cent of the time? It is important to note that this is not what our amendments propose. Senator Campbell, I know it is not your portfolio area anymore but it is important that you understand that we are only asking people to vote on material matters.

Senator Ian Campbell—You haven’t defined that, though.

Senator CONROY—I think ‘material’ in the judicial system and how it is understood is fairly well defined. I am not seeking to redefine a very commonly understood definition of ‘material’ matters. The furphies that IFSA have come up with are pretty big. As I said, I hope they paid for breakfast. Just so you understand, in our view material resolutions would include matters such as remuneration and election of directors to the board. We have not created a definitive list. Instead we propose that the list be included in regulations to allow flexibility—the very thing you call for consistently—and consultation.

Senator Ian Campbell—So you will define it.

Senator CONROY—It is not an exclusive list, Senator Campbell. By requiring disclosure of voting records in relation to a list of material resolutions in the regulations we are ensuring that a tick-a-box approach is not created.

Senator Ian Campbell—If you do define it, it’s tick a box.

Senator CONROY—No. Many pieces of legislation, Senator Campbell—I know you are not in charge of many pieces of legislation in your portfolio and so you do not get to do this very often—give guidance. They list a number of items and say, ‘This list is not exhaustive.’

Senator Ian Campbell—You’ve said you’re going to have a regulation, so you’re going to have a fuzzy regulation.

Senator CONROY—You have introduced many pieces of what you are now calling fuzzy legislation. Senator Campbell. I am going to try to progress the debate. As Manager of Government Business in the Senate you normally encourage people to be brief. I can only presume, given your loquaciousness tonight, that you do not have as full a program as you have been telling us on this side of the chamber for some time you do. You are quite happy to spend a lot of time debating this issue, but I am conscious of a responsibility. I am confident that my col-
leagues would prefer it if we were to move it along, so I will conclude.

The importance of these amendments should not be underestimated. Whilst Australia lags further behind international best practice on proxy voting by institutional investors, Labor—and I am hoping again tonight—with the help of the Democrats, is leading the debate in Australia. The amendments which I moved today will have the most profound impact on the corporate governance movement in Australia. We have an opportunity today to make Australia a leader in the field of corporate governance. If the Howard government votes against Labor’s amendments, we can chalk up another win for IFSA, the vested interests and the faceless institutional investors who operate in their own private world.

To the corporate governance movement around the world I give you this piece of advice: do not be surprised if the Howard government votes against greater transparency in relation to the voting activities of institutional investors. What push comes to shove, this government always backs the big end of town, and today I fear it will be no different. To vote in favour of a policy which is opposed by IFSA and the largest institutional investors in this country takes courage, Senator Campbell—a characteristic which is in short supply in the Howard government.

Senator MURRAY (Western Australia) (8.53 p.m.)—This matter, despite the length of time we have dedicated to it this evening, was covered quite extensively on the first day of debate, from memory. I think that illustrates its importance. It is a very important issue because it is about the most fundamental aspect of corporate democracy, which is the registration of the thoughtful views of shareholders. I suspect most shareholders around the world today invest their shares through institutions.

In my view—as I have put it previously—those institutions have a fiduciary duty to the beneficial owners of shares to exercise their vote. The substance of our view is not an aspect of contention. Neither the opposition nor the government takes the view that shareholders and institutions that have a fiduciary duty toward the beneficial owner of the shares, which they act for and manage, should not vote. But the question is: ‘Are they voting?’ That is the fundamental issue that Senator Conroy is raising. Attached to that fundamental issue of whether they are voting is whether they are voting thoughtfully and in the interests of their clients as opposed to commercial advantage or responding to some inducement, which may be hidden. That is why Senator Conroy uses words like ‘disinfectant’ to indicate an opposition to secrecy which can allow either thoughtlessness or corrupt voting. It is corrupt to vote for inducements or for considerations other than your clients’ interests.

Where are the Democrats with these amendments? I return to the earlier debate. We said that, firstly, we are supporters of compulsory voting, because we believe it is the duty of institutions that act for or manage shares on behalf of share owners to exercise a vote; and, secondly, we are great supporters of corporate democracy. However, we recognise that there are transitional issues. The issues are: how well equipped are institutions with the systems and the people to move into full disclosure as well as full voting—because disclosure is different from voting? It is one thing to vote your shares; it is another thing to set up the web sites, to record those votes and to disclose them in that way.

Our view was that you have to contest at this stage a basic proposition: do you require votes for the most important aspects of corporate resolutions, or do you require votes for all resolutions? The proposition put by Labor today is that some institutions—I
might say a very substantial and large part of the market—should vote for all resolutions. The proposition we put the other day was that all institutions with a fiduciary duty should vote for three main areas: the election of directors, any issue to do with company constitutions and any issue to do with directors’ remuneration.

I had a look at the article referred to by Senator Conroy. It is headed: ‘United States reform will spark industry revolution’ by Stephen Davis, 20 June 2004. It is quite interesting that one of the things quoted as exhibiting one of the most important areas where a vote will count is towards the end of the article. It says:

N-PX—

which is the name for this system—
will expose those funds that slavishly endorse every corporate management position. Then there are the internet’s financial chat rooms. Watch them blaze with comments such as ‘Why on earth did my blankety blank fund vote for Disney Chief Executive Officer, Michael Eisner?’

That illustrates my point that the election of directors is without doubt one of the most—in my view the most—important issues on which they should be exercising a vote and telling their shareholders how they voted and, if necessary, why they voted that way. Shareholders have an intense interest in the directors because it is the directors who represent the shareholders and who are responsible for the assets and the health of the company. I think that reinforces both my point and the points made by Senator Conroy.

The other point, in brief response to the debate I have heard between the minister and the shadow minister, is that earlier in that article it says:

That secrecy ends August 31, 2004—

four days before the election, folks—
when mutuals representing some 20 per cent of United States equity will have to file new N-PX forms showing how they voted all holdings at home and abroad in the previous year. There is an important point there. They say ‘voting all holdings at home and abroad’. So, those funds that they name—like Fidelity, Vanguard, Templeton, TIAA-CREF and others—will be telling Australian shareholders how they have voted in our Stock Exchange and in our company resolutions, but our own funds will not. That is the sort of situation that will beg for catch-up.

The last thing I would say is that the government has a position and it is the minister’s job to defend that position. However, I have seen previous circumstances—without reflecting at all on the minister’s or anybody else’s vote—where the minister, or any other minister, has strongly defended the government’s position, the Senate has then put through a vote and later on the government has accepted that. So the fact that Senator Ian Campbell, the minister, may feel strongly about this in the debate and express himself very forcefully does not mean to my mind that the government would or should automatically reject the amendments. I say to the government: you have a basic choice. You can refuse my concept on behalf of the Democrats or Senator Conroy’s concept on behalf of Labor or leave all as is, and if you do that I think catch-up will occur—I think Senator Conroy is right: the world will come to us even if we do not go to it—or you can accept one of our propositions or you can introduce your own compulsory voting program with transitional arrangements. Any of those would be an advance on a situation where we rely on votes which are apparently made on a unanimous basis—I have not done the research that Senator Conroy has done—almost always, it seems. One hundred per cent always vote with companies, they are never recorded and reasons are never given. Those things do not strike me as a proper exercise of fiduciary duty.
What we know in this chamber is that this bill has to come back. There are other amendments to it. I propose that this is another amendment that the government will have to review in the lower house. They will have to make a decision as to how they react to it and whether they support it, but the basic proposition is very sound. The basic proposition is that this set of amendments from Senator Conroy reinforces and increases shareholder participation and shareholder democracy. They encourage thoughtful voting and I hope they will display on the record the way and the reasons for the votes that are exercised. I think the consequence of that is good for shareholders. I am not at all surprised that Senator Conroy quotes the Australian Shareholders Association, because this is exactly the sort of issue about which they are concerned—that companies do feel the full force of shareholder opinion. Accordingly, with those fairly lengthy remarks—but I thought it was an important issue—I record that the Democrats will support Senator Conroy’s amendments.

Question agreed to.

Senator CONROY (Victoria) (9.03 p.m.)—I am very reliably informed that I have to move an amendment to my amendment. It has been circulated on sheet 4280. I move:

R(58) Schedule 8, page 230 (after line 22), after item 15, insert:

15A At the end of section 300
Add:

(16) Where the listing rules of a listed market operator require the disclosure of substantial shareholding information in the annual report, the list of substantial shareholders in the annual report must include the name of a person which is disclosed to the listed company or responsible entity under section 672A or 672C and is kept in the register in accordance with 672DA.

I propose an amendment to Labor’s original amendment to ensure consistency with the new register requirements in proposed section 672DA. Labor welcomes the government’s decision to adopt Labor policy and reinstate a register for the disclosure of beneficial ownership. Labor’s guide to the CLERP 9 amendments, which was released on 30 May this year, indicated that Labor would move an amendment to disclose beneficial ownership. I have two amendments to the government’s provisions on the beneficial ownership register, which I will discuss when we debate the government amendments.

In the meantime, I will discuss Labor’s amendment in relation to annual reports. In addition to disclosure of beneficial owners in a register, we believe that disclosure of the top 20 shareholders in the annual report should also be improved. Currently companies listed on the ASX are required to disclose in the annual report the names of their 20 largest shareholders. Many institutional shareholders hold their securities through nominee or custodial companies. This means that the disclosure of the largest shareholders in the annual report often results in the disclosure of nominee companies. Now that the government has agreed to require a register of beneficial owners, it seems only fair that such information on the 20 largest shareholders should also be disclosed in the annual report. Accordingly, Labor’s amendment says that, where a company has information disclosed to it under the tracing provisions with respect to the real beneficial owners and this information is included in the new beneficial ownership register, the names of the beneficial owners should also be disclosed in the annual report in relation to the top 20 shareholders.
The TEMPORARY CHAIRMAN (Senator Watson)—The question is that the opposition amendments be agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.06 p.m.)—I was going to explain why it is just a waste of time. This amendment is just a waste of time, because it has already been achieved.

The TEMPORARY CHAIRMAN—I put the question.

Senator IAN CAMPBELL—Does Senator Murray want me to explain my reply?

Senator Murray—What I am hearing here is the minister reflecting on the vote of the chamber.

Senator IAN CAMPBELL—I was seeking the call. I wanted to know if you would like me to explain why we are opposed to it.

Senator Murray—I certainly would, Minister. I had not realised you were going to speak. I thought you had indicated that you would not speak.

The TEMPORARY CHAIRMAN—It might be a good idea if all the participants addressed their comments through the chair.

Senator IAN CAMPBELL—I was trying to do that, but you were looking the other way. I was seeking the call as you called for the vote because we believe the ALP amendment would not achieve any improvement in transparency and would, in a perverse way, reduce transparency by adding volumes to annual reports, which many, including the Australian Shareholders Association, would argue are already so voluminous that many shareholders do not bother to read them. Many companies in Australia have enormous trouble getting annual reports into standard available letterboxes. That is why I have been pushing very hard to ensure that annual reports are easily available electronically.

The trigger for disclosure of substantial shareholdings is unrelated to the information to be disclosed regarding beneficial ownership. The register for beneficial ownership is required to be kept regardless of the shareholding. Government amendments already deal with the disclosure of information provided to a company regarding the beneficial ownership of shares and therefore the information which this amendment requires to be disclosed in the annual report is already easily ascertainable. This amendment would therefore be unlikely to improve transparency and the only result would be voluminous information being included in the annual report. We can see no rationale for the amendment. If there is a rationale it is quite unclear. The trigger, as I have said, for the substantial shareholding is entirely unrelated to the information to be disclosed.

The amendments that have been moved by Senator Conroy seek to amend section 300 of the act, which requires that, where the listing rules require disclosure of substantial shareholdings information in the annual report, the list of substantial shareholders must also include the name of the beneficial owners of the shares, which are included in the register of beneficial ownership in accordance with section 672DA. We say it is creating a significant new paperwork burden that does not assist the marketplace to understand the nature of the shareholding. You are basically increasing the amount of paper that exists. I would argue that one of the great problems we have in Australia is that it is hard, particularly for private investors, to understand many of these documents. All we are effectively doing here is saying, ‘Let us record in yet another place information that is already required to be recorded under proposed and existing law.’ We think it is a waste of time and effort which could in a perverse way reduce the quality of information available to the marketplace.
Senator MURRAY (Western Australia) (9.10 p.m.)—Unless Senator Conroy has a riposte to that, that seems a persuasive argument and I am glad it was made. The intent of the amendment, to achieve greater disclosure, is a good one but after a quick think about the minister’s response and the reading of this it would seem to me that if you already have beneficial owners being exposed then going beyond that to what you are suggesting might result in getting a company that owns a company that owns a company—you see what I mean—and you end up with large diagrams and attachments to an annual report. This sort of approach would be better exhibited in another form if it was necessary. I am uncertain about the technical consequence; I do not disagree with the intent.

Senator CONROY (Victoria) (9.11 p.m.)—I am bemused, frankly, by the minister’s interpretation. Currently, the 20 names of the 20 biggest shareholders are listed. We are saying that where in the beneficial ownership roll, which is separate, there is now one name—there are not diagrams; the beneficial owner by definition is the true economic owner of the asset—we are seeking to take that name and simply insert it where there is one name currently in the annual report, which would be, perhaps, a holding company. All we are seeking to do is take a name that has already been revealed to the company on one roll and have it replace a name that is possibly not the beneficial owner or is just a holding company in the top 20. So there will only be 20 names. I am bemused by the minister’s interpretation that there will somehow be something other than that. You have to now reveal beneficial owners under the law. There will be a roll of beneficial owners. We are simply saying, ‘Take that name if you have it and put it in the annual report.’” Unless something perverse is happening on the roll of beneficial owners, all we are doing is taking the top 20 and inserting them into the annual report. Perhaps Senator Campbell might want to explain further and we might get greater clarity.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.13 p.m.)—It needs to have greater clarity because there is a genuine misunderstanding over the top 20 shareholders and the substantial shareholders. They can sometimes be similar but they are not always. Substantial shareholders are any entity that holds more than five per cent. If you then use the provisions which expose the beneficial owners of that five per cent then you can potentially be talking about hundreds and hundreds of beneficial owners. That is the reality. Because there is a lack of clarity—our people have been working assiduously trying to figure out the genesis of this—I would be happy to see the amendment negativ ed obviously and for our troops to brief Senator Murray while the bill is doing the walk across the hall and back. We think that Senator Conroy does not understand the amount of extra paperwork this will create. There seems to be a confusion between substantial shareholders and the top 20. They are sometimes the same but often quite different.

Senator MURRAY (Western Australia) (9.14 p.m.)—I will be brutally frank. When this bill comes back there will be some amendments we will consider we should insist on and others we will not. This is not one we will insist on, so I do not see any point in my agreeing to an amendment about which I am still uncertain as to how it will work out. It is not a reflection on your explanation or on your intention, Senator Conroy. It is just that I am pretty certain that the minister and the government are likely to knock this one off. It is not one that I will insist on.
Senator CONROY (Victoria) (9.15 p.m.)—I would just like to clarify this. I appreciate that the minister has managed to create a cloud in your mind, Senator Murray. Perhaps if I read it out it will become clear. This is in reference to the listing rules, which are quite clear. It says:

Where the listing rules of a listed market operator require the disclosure of substantial shareholding information in the annual report—

where that is a requirement—

the list of substantial shareholders in the annual report must include the name of a person which is disclosed to the listed company or responsible entity under section 672A or 672C and is kept in the register in accordance with 672DA.

If you read this in conjunction with the listing rules, which are quite specific about what is to be revealed, it is perfectly clear. I appreciate that if you just had this and there was nothing else possibly involved in this, you may come up with the construction that the minister has come up with, but you need to understand that it says ‘where the listing rules’ and you have to read it in conjunction with the listing rules. I appreciate the point you are making, Senator Murray, and I appreciate that perhaps Senator Ian Campbell has been able to cloud the debate somewhat, but it is really quite simple and straightforward. I do not accept the interpretation or construction that the minister is making.

Senator Murray—Mr Temporary Chairman, I am quite sure the minister did not mean it, even if he said it, because he would never expect me to say the same about the advisers in the box who so frequently have to advise ministers who do not know anything about the bills before them because they are there as duty ministers. We never complain about that, because it is quite right that you should take expert advice when it is available.

The TEMPORARY CHAIRMAN—Let us move to Democrat amendment (7).

Senator MURRAY (Western Australia) (9.17 p.m.)—I went to my adviser and I said, ‘I am in two minds on this; where should I go with this?’ He said that in his opinion we should pass it. I said, ‘In that case I will agree with Senator Conroy.’ That is why we have advisers.

Question agreed to.

Senator Ian Campbell interjecting—

Senator Conroy—Mr Temporary Chairman, on a point of order: I ask that Senator Ian Campbell withdraws those comments. I think they are entirely unparliamentary and reflecting on Senator Murray’s adviser like that is unacceptable. You are sitting there being advised by Treasury officials and no-one is being critical of them when we disagree. No-one is passing any reflection on the Treasury officials when they give you information that we do not agree with. To sit there and say that it is a disgrace that an unelected person is making decisions in the chamber is unacceptable. I ask you to withdraw it.

Senator Murray—Mr Temporary Chairman, I am quite sure the minister did not mean it, even if he said it, because he would never expect me to say the same about the advisers in the box who so frequently have to advise ministers who do not know anything about the bills before them because they are there as duty ministers. We never complain about that, because it is quite right that you should take expert advice when it is available.
out general principles on which the selections are to be made, including but not limited to:

(a) merit; and
(b) independent scrutiny of appointments; and
(c) probity; and
(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.

(3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Here we have a situation where the minister and the shadow minister can be in furious agreement. This will be the 24th time on which an amendment of this sort has been put.

**Senator Conroy**—I know you are keeping a book on this.

**Senator Murray**—I am keeping a book on it. This will be the 24th time that this amendment has been put to one bill or another. The amendment is an astonishing one. It states:

The Minister must by writing determine a code of practice, for selecting a person to be appointed to a position under this Act ... including but not limited to:

(a) merit; and
(b) independent scrutiny of appointments; and
(c) probity; and
(d) openness and transparency.

It is an astonishing concept that appointments should be by merit! I remind those in the chamber who have not heard these remarks before that the amendments are drawn from Lord Nolan’s commission of inquiry in Britain. I always regard Britain as a semi-democracy because it does not have a Senate. In Britain Lord Nolan was asked to have a look at the whole business of patronage and he came up with a set of recommendations and—Glory be!—the government and the parliament of Great Britain accepted them. So this is now standard practice. This standard practice in Britain seeks to prohibit patronage and favouritism. I was absolutely delighted to discover that in our own Australian Federal Police Act 1979 there is a prohibition on patronage and favouritism. It reads as follows:

The Commissioner, or delegate of the Commissioner, in exercising powers under this Act in relation to the engagement of AFP employees or otherwise in relation to AFP employees, must do so without patronage or favouritism.

If anyone wanted to amend my amendment and put that in instead, I would be delighted, but it is about time that the procedures for merit selection of government appointments were introduced and became standard practice and that patronage was diminished—by whichever government and whichever political party. And it is about time that our citizens were assured that nobody could ever be appointed without going through a merit process. Of course I do not mean to reflect on some absolutely magnificent appointments by the previous Labor government over time in all fields, and by this government over time. But there have been some real doozies which definitely stink of patronage and favouritism. With those remarks, and in the expectation of this going down for the 24th time, I recommend the amendment to the chamber.
Tuesday, 22 June 2004

Senator CONROY (Victoria) (9.21 p.m.)—I thought I should respond to your invitation to add to your book, as I know you are keeping a list of the arguments that have been presented against this proposal. One of the things I have always admired about Senator Murray is his persistence. He beavers away, he is always consistent, he always makes his argument and he always does it in such good humour—as he has done when putting this argument. As tempting as it is—drawing on Peter Reith, Michael Baume and Jim Short, all former politicians; all cronies of the government—to take up this opportunity, I am afraid I am once again going to have to decline on behalf of the opposition.

Senator Murray—For technical reasons and for drafting reasons, of course.

Senator CONROY—You are well rehearsed in the many reasons, but I indicate the opposition declines to support Senator Murray’s worthy amendment.

Question negatived.

Senator CONROY (Victoria) (9.23 p.m.)—by leave—I move opposition amendments (59) and (60):

(59) Schedule 10, page 241 (after line 13), at the end of the Schedule add:

2 At the end of Chapter 6CA
Add:

678A Other disclosures
(1) Presentations given by a listed corporation during an analyst briefing shall be made generally available to all members of that corporation as prescribed by the regulations.
(2) For the purposes of subsection (1), an analyst briefing is a briefing provided to a representative or representatives of financial institutions regarding the performance or operation of a listed corporation.

(60) Schedule 10, page 241 (after line 13), at the end of the Schedule, add:

3 Section 9
Insert:

analyst means the employee or authorised representative of the financial services licensee who prepares a research report.

4 Section 9
Insert:

research report has a meaning as defined in the regulations.

5 After Division 4 of Part 7.7
Insert:

Division 4A—Analyst independence
950D Disclosures required in research report
(1) Subject to subsection (2), a research report which is provided to a retail client must include the following:
(a) information about the remuneration or other benefits that the analyst may receive that might reasonably be expected to be capable of influencing the analyst in preparing the research report; and
(b) information about:
(i) any other interests of which the analyst is aware, whether pecuniary or not and whether direct or indirect, of the analyst or the financial services licensee who employs the analyst or for whom the analyst is an authorised representative that might reasonably be expected to be capable of influencing the analyst in preparing the research report; and
(ii) any associations or relationships of which the analyst is aware between the analyst or the financial services licensee who employs the analyst or for whom the analyst is an authorised representative, and the listed corporation that is the subject of the research report, that might reasonably be
expected to be capable of influencing the analyst in preparing the research report; and

(c) any other information required by the regulations.

(2) The requirements set out in subsection (1) do not apply in the situations set out in the regulations.

(3) A more detailed statement of the information required by one or more provisions of subsection (1) may be provided in the regulations.

950E Restrictions on issue of research reports

(1) A financial services licensee must not issue a research report to a retail client regarding a listed corporation for which the analyst or the employer of the analyst acted as manager or co-manager of an initial public offering of securities for that corporation within the period prescribed by the regulations.

(2) A financial services licensee must not issue a research report to a retail client regarding a listed corporation for which the analyst or the employer of the analyst acted as manager or co-manager of any offering of securities (other than an initial public offering of securities) for that corporation within the period prescribed by the regulations.

(3) Notwithstanding subsections (1) and (2), a financial services licensee may issue a research report to a retail client that is issued due to significant news and events.

950F Current reports

(1) An analyst must not trade in securities that are the subject of the latest research report, prepared by the analyst and published within the period prescribed in the regulations.

(2) Except as prescribed in the regulations, an analyst must not trade in securities in a manner that is inconsistent with a recommendation or opinion contained in the latest research report prepared by that analyst and published in the period prescribed in the regulations.

950G Trading in company securities

(1) A listed corporation must establish a policy concerning trading the company’s securities by directors, officers and employees.

(2) The policy must be made publicly available in printed or electronic form (where electronic form includes publishing on the Internet on the website of the relevant entity).

The opposition’s amendments relate to analysts. I have already discussed these amendments during the second reading debate. I do not want to go into detail again, given the time. However, I would like to make the comment that the ASX also recently indicated it was concerned about analyst independence. Karen Hamilton, the head of the market integrity division of the ASX, is quoted in the Financial Review as saying:

There is concern that the recommendations of many brokers and analysts seem biased, driven not by an assessment of the investment opportunity but by the lure of commissions or the lucrative riches of the investment banking side of the business …

This is a damning comment by the head of the market integrity division at the ASX. Ms Hamilton’s comments reinforce the concerns which ASIC raised in their report into analyst independence in August 2003. ASIC’s 2003 report said:

We did observe some systemic weaknesses in the ability of entities to adequately identify, manage and disclose conflicts of interest.

Labor’s amendments will ensure that analysts fully disclose the remuneration and other benefits which might reasonably be expected to be capable of influencing the analyst in preparing the research report. An-
other amendment based on disclosure is our amendment which requires listed companies to establish a policy concerning trading in its own company’s securities. This is not a radical proposal. The ASX’s corporate government guidelines already recommend that companies have such a policy. In our view, it should be a requirement in law.

ASIC’s recommendations to Treasury on the original CLERP 9 policy paper state that disclosure is not sufficient in all cases. ASIC recommended that, at a fundamental level, the act needs to prohibit certain activities of analysts where conflicts cannot be effectively managed and that disclosure of such conflicts is not sufficient to mitigate consumer or market integrity risk. ASIC went on to recommend that the following activities be prohibited in the act: trading by an analyst or researcher in products that are the subject of a current research report within a set period and trading by an analyst or its individual researchers against a recommendation or opinion contained in a current research report. The CLERP 9 bill has failed to heed ASIC’s recommendations. Instead, the bill inserts a requirement that says licensees are to manage their conflicts. This will be accompanied by an ASIC policy statement. The Howard government has taken a self-regulatory approach yet again, the very approach which ASIC found has failed. In their 2003 report, ASIC found that investment banks had ignored industry guidelines. To quote the report:

… industry guidelines developed by the Securities and Derivatives Industry Association … and the Securities Industry of Australia … have not been adopted as closely as intended and that there is still significant room for conflicts of interest to occur and to remain unmanaged.

In light of the failure of this self-regulatory approach, Labor’s amendments prohibit trading by an analyst in a manner that is inconsistent with a recommendation or opinion contained in a current research report within the prescribed period. This will prohibit trading in securities which are the subject of a current research report within a prescribed period. This will require quiet periods by restricting the publication of any reports for a prescribed period after the analyst firm has acted in an IPO for the company that is the subject of a report. In addition, we require companies to disclose information provided during briefings to analysts.

The Australian Shareholders Association advised the committee that they endorsed Labor’s proposal to require the disclosure of information provided during analyst briefings. If the government persist with their self-regulatory approach, Australian investors will suffer. When both ASIC and the head of the ASX market integrity division raise concerns about analysts, it is clear that problems in industry exist. Labor’s amendments will address many of these concerns.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.28 p.m.)—Senator Conroy suggests that the ASX market integrity chief supports the approach of the Labor Party proposed here. In fact, if you read what Karen Hamilton said last week in the Financial Review article and if you have heard what she has said to forums I have convened discussing this very issue, you would know that she absolutely and solidly supports the new regulatory approach. It is not a self-regulatory approach; it is absolutely wrong to say that. To call a clear black-letter requirement—a new requirement that not only should firms manage conflicts of interest but put in place arrangements to manage them, and then for the regulator to put in through the policy statement a requirement to show how you do that—self-regulatory, is absolutely absurd. It is a whole new legal requirement. It is absolutely clear and it is backed up by new licensing requirements.
under the Financial Services Reform Act, which effectively means people who do not do this lose their licence. It is a very strict regulation; it is a very strict law.

Senator Conroy said earlier the government have not had the guts to take on the top end of town. We are the government who stood up to the trustee industry and brought in the managed investments legislation. Who wimped out on that? The Australian Labor Party. We are the government who brought in the Financial Services Reform Act, which required the heaviest new regulation of financial services in Australian history and hundreds of millions of dollars of new investment by people in financial services, which we have copped enormous flak for out there in the community. That would have been something that Labor probably would have done in their 14th year in power! They absolutely wimped out on financial services and corporate issues for most of their 13 dismal years in power.

We brought in financial services reforms. We brought in the managed investments legislation. We brought in new competition to banking. We have done all the hard yards on this stuff. We are the ones who have created infringement penalties through CLERP 9 and have copped all that. We have brought in whole new regulation for analysts, after years of work. All Labor have to do is say: ‘Gee whiz, this government are actually doing all the hard stuff. What will we do to differentiate the product?’

ASIC reject what Labor are trying to move tonight. Ian Johnson and the crew at ASIC who did the research into analyst independence and analysts in Australia, following the Wall Street collapses, found that the marketplace in Australia was much better regulated than Wall Street and that there were none of the systemic abuses that occurred in Wall Street—quite the opposite to what Senator Conroy says. ASIC support this model. That is why they have done the policy statement. ASIC think that this way of doing it is more likely to get a result than having a tick-a-box approach which has proved to be a failure wherever else it has been tried.

The approach that we have taken puts a lot more responsibility where you need it. It ensures that ASIC have the clear legislative power they need to take action where there are conflicts of interest and it gives them the regulatory backing, the legislative backing, for their policies, which are far more comprehensive than this grab bag of ideas that the Labor Party have passed off as a policy.

Senator CONROY (Victoria) (9.31 p.m.)—In response to that tirade, let me quote from an editorial of another journal of left-wing conspiracies—the Financial Review.

Stockbrokers did not go out of their way to dispel their image as the wide boys of the public company securities market. Karen Hamilton, the Australian Stock Exchange’s chief integrity officer, said last month. Ms Hamilton told the conference of the Securities & Derivatives Industry Association—

one which I actually spoke at with her—

Senator McGauran—Name them.

Senator CONROY—Pardon?

Senator Ian Campbell—Let us just see how Andrew is voting and get on with it. We do not need all of this.

Senator CONROY—It goes on:

... they had reacted initially with resentment and hostility to invitations to address issues of ethics, integrity and analyst independence. In doing so, they had missed their chance to lead the debate rather than follow sullenly behind, she scolded.

The brokers’ “attitude problem” may have been confirmed unwittingly by the responses of industry leaders to Ms Hamilton’s charges. ‘We can’t speak for everybody but the majority of
people try to do the right thing.” David Horsfield, chief executive of the SDIA, lamely told this newspaper. Peter Mason, chairman of JP Morgan Australia, said: “Houses of repute have been well alert to this. You don’t need someone to write it all down in a book to tell you that’s the way you should behave.”

But in a bull market, even houses of repute forget how to behave. This dismissive stance contrasts sharply with the way other financial market professionals—directors, auditors, lawyers and fund managers—responded to the challenge of restoring public confidence in the securities markets after the wave of company collapses ...

It goes on to say:

Even so, they—referring to the brokers—must accept they are operating in a retail as well as a professional market, one that mums and dads are encouraged to enter by government privatisation policies, and their observance of these rules hasn’t been strict to date. Asic found last August that the self-regulatory code—this is how the Financial Review describes your regime—left plenty of room for conflicts of interest to go unchecked ...

The editorial goes on to say:

But for all Ms Hamilton’s tough talk, the ASX is still happy for brokers to manage their own conflicts. So do not stand up here and try to pretend that you are delivering anything other than your traditional self-regulation for this industry. You have caved into the vested interest once again. You are not introducing a new tough code. The only way we are going to deal with this is for you to support Labor’s amendments.

Question agreed to.

Senator CONROY (Victoria) (9.35 p.m.)—by leave—I move opposition amendments (61) and (62) on sheet 4216:

(61) Schedule 11, page 242 (after line 14), after item 3, insert:

3A After subsection 136(3)

Insert:

(3A) Any further requirement specified in the constitution must not be inconsistent with this Act.

(3B) If a company has an existing further requirement in the constitution which is inconsistent with this Act, it is void.

(3C) Subsections (3A) and (3B) are subject to the exceptions in the regulations.

(62) Schedule 1, page 23 (after line 13), after item 39, insert:

39A After subsection 249N(1A)

Insert:

(1AB) A further requirement in subsection 136(3) must not modify the application of subsection (1) or (1A).

(1AC) If a company constitution contains a further requirement which modifies the application of subsection (1) or (1A), this further requirement is void.

(1AD) Subsections (1AB) and (1AC) are subject to the exceptions in the regulations.

I call these amendments the Boral amendments. Amendment (61) relates to section 136(3). This amendment says that any further requirement specified in a company’s constitution must not be inconsistent with the Corporations Act. This provision is subject to the exceptions in the regulations. Amendment (62) relates to section 249N. This amendment is very specific. The effect of this amendment is to make section 249N take precedence over section 136(3). This means that any further requirement which tries to modify the 100-member rule in section 249N is void. This amendment is also subject to the exceptions in the regulations.

These amendments have arisen because Australia’s institutional investors turned a blind eye as shareholders’ rights were di-
rectly attacked by Boral at their AGM in October last year. Despite warnings from the Australian Shareholders Association, Corporate Governance International and the Australian Council of Super Investors, institutions overwhelmingly supported a Boral resolution which erodes shareholder democracy. Now that the resolution has been passed, Boral shareholders will need to have five per cent of the capital—about $160 million worth of Boral shares—in order to propose a resolution that amends the company’s constitution. In my view, this is a direct attack on shareholders’ rights and runs counter to the spirit of the Corporations Act 2001. Section 249N of the Corporations Act states that 100 shareholders who are entitled to vote at the meeting ‘may give a company notice of a resolution that they propose to move at a general meeting’. Boral has effectively denied each Boral shareholder the right to join with 99 other shareholders and propose a resolution on the company’s constitution for debate at the general meeting. These amendments ensure that Boral does not set a precedent for other companies to circumvent the spirit of the Corporations Act 2001. Let us make this clear: what Boral did last year was a disgrace. Boral and its management should be ashamed of themselves. It has attacked its own shareholders. It has turned its back on its own shareholders simply because it did not like some of the issues that were to be debated on the floor of an annual general meeting. It is not good enough. It deserves to be repudiated by the chamber and it deserves to be dealt with and supported by the government.

In conclusion—and the good news, Senator Campbell, is this is my final contribution for the evening unless you decide this needs to be responded to—if the government votes against Labor’s amendments, they are voting against enhanced accountability in relation to audit; enhanced disclosure in relation to executive remuneration; enhanced disclosure in relation to analyst independence; enhanced accountability of analysts; increased accountability of directors; better transparency in relation to the Financial Reporting Council; and better disclosure in relation to proxy voting by fund managers and trustees of super funds. If the government chooses to vote against our reforms which empower shareholders, they will be voting against reforms which will increase shareholder activism in Australia. The Howard government is fighting against a global tide in relation to disclosure of proxy votes by institutional investors. Anyone who owns shares, anyone with superannuation and anyone who has been outraged by obscene salary packages will welcome Labor’s amendments to the CLERP 9 bill.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.39 p.m.)—by leave—I move the remainder of the government amendments together:

(1) Clause 2, page 2 (table item 2), omit the table item, substitute:

2. Schedule 1 The later of:
   (a) 1 July 2004;
   and
   (b) the day after this Act receives the Royal Assent.

(2) Clause 2, page 2 (after table item 2), insert:

<table>
<thead>
<tr>
<th>2A. Schedule 2, Parts 1 and 2</th>
<th>The later of:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(a) 1 July 2004; and</td>
</tr>
<tr>
<td></td>
<td>(b) the day after this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>2B. Schedule 2, Part 3</td>
<td>1 January 2005, 1 January 2005</td>
</tr>
<tr>
<td>2C. Schedule 2, Part 4</td>
<td>The later of:</td>
</tr>
<tr>
<td></td>
<td>(a) 1 July 2004; and</td>
</tr>
</tbody>
</table>
### (8) Clause 2, page 2 (table item 13), omit the table item, substitute:

<table>
<thead>
<tr>
<th>13. Schedule 11</th>
<th>Immediately after the commencement of the provisions covered by table item 2.</th>
</tr>
</thead>
<tbody>
<tr>
<td>13A. Schedule 11A</td>
<td>1 January 2005. 1 January 2005</td>
</tr>
</tbody>
</table>

### (107) Page 243, after Schedule 11, insert:

**Schedule 11A—Register of information about relevant interests**

**Corporations Act 2001**

1 Subsection 168(1) (after note 1)

Insert:

Note 1A: See also section 672DA (register of relevant interests in listed company or registered scheme).

2 After section 672D

Insert:

**672DA Register of information about relevant interests in listed company or listed managed investment scheme**

(1) A listed company, or the responsible entity for a listed managed investment scheme, must keep a register of the following information that it receives under this Part on or after 1 January 2005 (whether the information is received pursuant to a direction the company, or responsible entity, itself gives under section 672A or is received from ASIC under section 672C):

- (a) details of the nature and extent of a person’s relevant interest in shares in the company or interests in the scheme;
- (b) details of the circumstances that give rise to a person’s relevant interest in shares in the company or interests in the scheme;
- (c) the name and address of a person who has a relevant interest in shares in the company or interests in the scheme;
(d) details of instructions that a person has given about:
   (i) the acquisition or disposal of shares in the company or interests in the scheme; or
   (ii) the exercise of any voting or other rights attached to shares in the company or interests in the scheme; or
   (iii) any other matter relating to shares in the company or interests in the scheme;

(e) the name and address of a person who has given instructions of the kind referred to in paragraph (d).

The register must be kept in accordance with this section.

(2) A register kept under this section by a listed company must be kept at:
   (a) the company's registered office; or
   (b) the company's principal place of business in this jurisdiction; or
   (c) a place in this jurisdiction (whether or not an office of the company) where the work involved in maintaining the register is done; or
   (d) another place in this jurisdiction approved by ASIC.

(3) A register kept under this section by the responsible entity of a listed managed investment scheme must be kept at:
   (a) the responsible entity's registered office; or
   (b) the responsible entity's principal place of business in this jurisdiction; or
   (c) a place in this jurisdiction (whether or not an office of the responsible entity) where the work involved in maintaining the register is done; or
   (d) another place in this jurisdiction approved by ASIC.

(4) The company, or the responsible entity, must lodge with ASIC a notice of the address at which the register is kept within 7 days after the register is established at a place that:
   (a) is not the registered office of the company or responsible entity; and
   (b) is not at the principal place of business of the company or responsible entity in this jurisdiction; or

Notice is not required for moving the register between the registered office and the principal place of business in this jurisdiction.

Note: The obligation to notify ASIC under this subsection is a continuing obligation and the company or responsible entity is guilty of an offence for each day, after the 7 day period, until ASIC is notified (see section 4K of the Crimes Act 1914).

(5) An offence based on subsection (2), (3) or (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(6) The register must either contain:
   (a) the name of each holder of shares in the company, or interests in the scheme, to whom the information relates; and
   (b) against the name of each such holder:
      (i) the name and address of each other person (if any) who, according to information the company, or the responsible entity, has received under this Part on or after 1 January 2005, has a relevant interest in any of the shares or interests (together with details of the relevant interest and of the circumstances because of which the other person has the relevant interest); and
      (ii) the name and address of each person who, according to
information received by the company, or the responsible entity, under this Part on or after 1 January 2005, has given relevant instructions in relation to any of the shares or interests (together with details of those relevant instructions); and

(c) in relation to each item of information entered in the register, the date on which the item was entered in the register;

or be in such other form as ASIC approves in writing.

(7) The register must be open for inspection:

(a) by any member of the company or scheme—without charge; and

(b) by any other person:

(i) if the company, or the responsible entity, requires the payment of a fee for the inspection—on payment of the fee; or

(ii) if the company, or the responsible entity, does not require the payment of a fee for the inspection—without charge.

The amount of the fee required by the company, or the responsible entity, under subparagraph (b)(i) must not exceed the amount prescribed by the regulations for the purposes of this subsection.

(8) A person may request the company, or the responsible entity, to give to the person a copy of the register (or any part of the register) and, if such a request is made, the company, or the responsible entity, must give the person the copy:

(a) if the company, or the responsible entity, requires payment of a fee for the copy:

(i) before the end of 21 days after the day on which the payment of the fee is received by the company or the responsible entity; or

(ii) within such longer period as ASIC approves in writing; or

(b) if the company, or the responsible entity, does not require payment of a fee for the copy:

(i) before the end of 21 days after the day on which the request is made; or

(ii) within such longer period as ASIC approves in writing.

The amount of the fee required by the company, or the responsible entity, under paragraph (a) must not exceed the amount prescribed by the regulations for the purposes of this subsection.

Note: The obligation to give the copy under this subsection is a continuing obligation and the company or responsible entity is guilty of an offence for each day, after the period referred to in paragraph (a) or (b), until the copy is given (see section 4K of the Crimes Act 1914).

(9) The information that subsection (6) requires to be entered in the register must be entered in the register by the company, or the responsible entity, before the end of 2 business days after the day on which the company, or the responsible entity, receives the information.

Note: The obligation to enter the details in the register under this subsection is a continuing obligation and the company or responsible entity is guilty of an offence for each day, after the 2 business day period, until the details are entered in the register (see section 4K of the Crimes Act 1914).

3 Schedule 3 (after table item 229)
Insert:
Schedule 1 commencement means the day on which Schedule 1 to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 commences.

Schedule 4 commencement means the day on which Schedule 4 to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 commences.

Schedule 5 commencement means the day on which Schedule 5 to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 commences.

Schedule 8 commencement means the day on which Schedule 8 to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 commences.

Schedule 1 commencement means the day on which Schedule 1 to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 commences.

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Schedule 5 commencement means the day on which Schedule 5 to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 commences.

Schedule 8 commencement means the day on which Schedule 8 to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 commences.
Tuesday, 22 June 2004

(125) Schedule 12, item 2, page 248 (line 6), omit “31 December 2004”, substitute “the first anniversary of registration occurring on or after 1 January 2005”.

(126) Schedule 12, item 2, page 248 (line 11), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(127) Schedule 12, item 2, page 248 (line 25), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(128) Schedule 12, item 2, page 248 (line 27), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(129) Schedule 12, item 2, page 248 (line 31), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(130) Schedule 12, item 2, page 248 (line 32), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(131) Schedule 12, item 2, page 249 (line 11), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(132) Schedule 12, item 2, page 249 (line 13), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(133) Schedule 12, item 2, page 249 (line 14), omit “(2A)”, substitute “(3)”.

(134) Schedule 12, item 2, page 249 (line 16), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(135) Schedule 12, item 2, page 249 (line 17), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(136) Schedule 12, item 2, page 249 (line 20), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(137) Schedule 12, item 2, page 249 (line 23), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(138) Schedule 12, item 2, page 249 (line 26), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(139) Schedule 12, item 2, page 249 (line 29), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(140) Schedule 12, item 2, page 249 (line 32), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(141) Schedule 12, item 2, page 250 (line 3), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(142) Schedule 12, item 2, page 250 (line 5), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(143) Schedule 12, item 2, page 250 (line 7), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(144) Schedule 12, item 2, page 250 (line 9), omit “on 1 July 2004”, substitute “on the Schedule 1 commencement”.

(145) Schedule 12, item 2, page 250 (line 9), omit “after 1 July 2004”, substitute “after the Schedule 1 commencement”.

(146) Schedule 12, item 2, page 250 (line 13), omit “1 July 2004”, substitute “the Schedule 1 commencement”.

(147) Schedule 12, item 2, page 251 (lines 1 to 3), omit subsection 1465(3), substitute:

(3) The amendments made by Part 3 of Schedule 2 apply to financial reports lodged with ASIC on or after 1 January 2004.

(148) Schedule 12, item 2, page 251 (lines 14 and 15), omit “1 July 2004”, substitute “the Schedule 4 commencement”.

(149) Schedule 12, item 2, page 251 (line 25), after “4”, insert “, 4A”.

(150) Schedule 12, item 2, page 251 (line 27), omit “1 July 2004”, substitute “the Schedule 5 commencement”.

(151) Schedule 12, item 2, page 253 (line 8), omit “1 July 2004”, substitute “the Schedule 8 commencement”.

Question agreed to.

Senator MURRAY (Western Australia) (9.39 p.m.)—I would like to record for the record, because I know there is a bit of bad temper entering the debate, that to my memory both the Labor Party and the Democrats
have voted in favour of every single government amendment.

Senator CONROY (Victoria) (9.40 p.m.)—Before we conclude, I would like to thank Senator Murray and his office for all their contributions and suggestions as part of what has been a lengthy debate over a number of years. I am sure, ultimately, we will be back, Senator Murray, doing some more corporate law reform. I think Senator Ian Campbell has promised us CLERP 10, and I know everyone in the country is looking forward to that. I would also like to thank the Treasury officials who I know have worked extensively on this and I know that Senator Murray, despite our sometimes heated exchanges, is interested in good public policy. With the indulgence of the chamber, I would like to thank my own office and adviser who have worked long and hard on this. I believe they deserve some recognition for all the work that has gone into this.

Bill, as amended, agreed to.

Corporations (Fees) Amendment Bill (No. 2) 2003 agreed to without amendments and the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 agreed to with amendments; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for Local Government, Territories and Roads) (9.41 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

EXTENSION OF CHARITABLE PURPOSE BILL 2004

Second Reading

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

That this bill be now read a second time.
While the government now argues that the common law provides greater certainty to the charities sector, this is a fallacy. There are many impediments to relying on common law.

First, charities must understand and be on top of almost 400 years of case law to determine whether changes in their activities will affect their charitable status. This creates widespread uncertainty. Charities do not want to have to employ lawyers to get advice on the preamble to the 400-year-old Statute of Elizabeth. The ATO can simply issue a new ruling or tighten its interpretation of the law, and a charity can find itself in uncertain and unknown territory. Codifying the definition of a charity would have provided charities with greater certainty.

Secondly, judges cannot be in control of cases which come before them. Unlike parliament, they cannot respond to the changing needs of the charities sector. While this bill goes some way towards responding to the changing community perception of what a charity is, it does so in an ad hoc manner. Despite recommendations from its own Board of Taxation on clarifying the draft definition of charity bill, the government simply gave up on these important reforms. We are left with minor extensions to what constitutes a charitable purpose in this bill. This is yet another example of a tired government that has simply lost the drive to implement change.

The bill extends the scope of charitable purpose to include the provision of community not-for-profit child care; self-help organisations; and enclosed religious orders. Subject to meeting other common law tests, they would then enjoy charitable status and various tax concessions, including fringe benefits tax, GST and income tax concessions. The provision of not-for-profit child-care services is currently not considered a charitable purpose. Given the inadequate funding and support provided by the Howard-Costello Liberal government to this sector, the fact that they are providing charitable status should be viewed a little cynically. Most importantly, the bill completely ignores the important role performed by playgroups in the development of children.

Debate interrupted.

**ADJOURNMENT**

The ACTING DEPUTY PRESIDENT (Senator Kirk)—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Bacon, Hon. James (Jim) Alexander

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.50 p.m.)—Before I commence my contribution I seek leave to speak for in excess of 10 minutes if required.

Leave granted.

Senator FAULKNER—I thank the Senate. I rise tonight to pay tribute to Tasmania’s former Premier Jim Bacon. I do so on behalf of all my colleagues, but most particularly my Tasmanian colleagues, Senator O’Brien, Senator Sherry, Senator Mackay and Senator Denman. Such is the affection in which Jim Bacon was held by his comrades in the Tasmanian branch of the ALP that they are too distressed by his passing to speak tonight.

Jim died early Sunday morning after a terrible battle against the cancer which forced him to stand down in March from what he described as the job of his life. Faced with the most harrowing of circumstances, Jim displayed the most admirable of qualities: dignity, determination, courage and optimism. The shocking news of Jim’s inoperable cancer propelled Tasmanian state politics to national prominence. For many Australians, probably their first real encounter...
with Jim Bacon was the grace and dignity he displayed in announcing his illness and resignation. He won national admiration for his determination to fight as hard as he could and to make the most of whatever time he had left.

His decision to use his own tragic circumstances to warn others of the dangers of smoking I think was moving to us all. A smoker for more than 30 years, Jim had no hesitation in saying that he accepted full responsibility for his illness. He called himself an idiot for smoking and urged others to quit or not take up the—and I quote Jim—‘stupid, stupid habit’. But his frankness, his dignity, his courage and above all his optimism were no surprise to the people of his beloved adopted home, Tasmania, nor to his comrades in the labour movement.

Jim Bacon was extraordinarily popular in Tasmania, in no small part because of his compassion for his fellow citizens and his determination to do all he could to offer them opportunities to live full lives in a civil and civilised society. Jim had a fundamental understanding that public prosperity was crucial to giving Tasmanians economic and personal security. He knew from his own experience that private prosperity was but fragile protection against changing circumstances. His own middle-class, comfortable childhood was swept away by his father’s early death when Jim was only 12. From then on, his mother would struggle to bring up five children on a war widows pension and what she could earn from night nursing.

Jim was able to continue his education at Scotch College due to a bursary. A Commonwealth scholarship made it possible for him to go to Monash University when he finished school. At Monash he found the radical left highly appealing to his sense of outrage at the established order. Jim was a prominent militant at Monash University during the days of the Vietnam moratorium. His Maoist revolutionary philosophy served him better on the barricades than in the classroom.

Labouring work on building sites followed, where he found the politics of the Builders Labourers Federation a natural fit. He rose rapidly through the ranks, a loyal lieutenant to Norm Gallagher from 1973 to 1979. Some might now say that loyalty was misplaced. But loyalty was always Jim Bacon’s keystone. In 1980 he went to Tasmania as BLF State Secretary, a job that changed his life. Quite simply, he fell in love with the state that he came to describe as a unique ‘archipelago in the Southern Ocean’.

In nine years as the Tasmanian State Secretary, Jim came to moderate the radical expression of his ideas, although not his passionate commitment to social justice and equality. His pragmatism was always in means and methods rather than in principles. In 1989 Jim was unanimously elected Secretary of the Tasmanian Trades and Labour Council. In that year as well he joined the executive of the Australian Council of Trade Unions, where he served until 1995.

In 1996 Jim was elected to the House of Assembly in the Hobart seat of Denison. Less than a year later he took over from Michael Field as Labor leader in a smooth and bloodless transition. Jim had been marked as a future leader from his election. Eighteen months later he led the Tasmanian Labor Party to a resounding victory. In July 2002 he won the first back-to-back outright majority Labor government since Doug Lowe more than 20 years earlier. His personal popularity was such that he polled a record 21,391 votes in Denison. In fact, whenever you talk about any of Jim’s elections—to parliament, to positions in the party or in the labour movement—the words to use are ‘overwhelming’, ‘unanimous’ or ‘uncon-
tested’ because people just knew that Jim was the man for the job, whatever that job might be.

But the premiership of Tasmania was the job of his life. It is not an exaggeration to say he turned Tasmania around. He brought optimism back to Tasmania, because his own optimism was so contagious and so relentless. He was sometimes known as ‘Good News Jim’ because of it. And who could ever forget Jim Bacon at the news conference at which he announced he had inoperable lung cancer, pausing and then saying: ‘The good news is …’. ‘Good News Jim’ brought good times back to Tasmania. I would like to quote Jim’s State of the State address to the Tasmanian parliament last September. During the five years of Labor’s majority reign, Jim said:

... Tasmania has become a different place. There is now a sense of excitement and optimism in the community.

In no small part, that was founded on the restoration of the state’s economy. Maoist revolutionary or not, Jim could make the hard decisions when it came to balancing budgets. But he knew that revitalising his beloved adopted state would take more than budget bottom lines. He knew that he had to make Tasmania a place where people wanted to live. And he knew that the key to that transformation was openness and inclusiveness, a vibrant and welcoming public culture. Jim Bacon led the way in Tasmanian mainstream politics to removing longstanding discrimination against gay and lesbian Tasmanians, taking Tasmania from the most backward state in Australia to the most progressive. His government passed antidiscrimination legislation that has been described as among the most progressive not only in Australia but also throughout the world.

He will always be remembered for his dedicated and passionate campaigning for social justice for Tasmania’s Indigenous community and for the bridges he built between government and those communities. In fact, you could say that he built bridges wherever he went. One of the most enduring memories that the people of Tasmania will carry of him is the regular forums he held in the small towns and suburbs of Tasmania. Government for Jim Bacon was something done with citizens, not to them. He introduced consultative reforms as Premier like Tasmania Together, a community consultative process that sets a series of goals and benchmarks for government as well as formal partnerships with councils, the university and other institutions.

From student politics to the union movement to the Premier’s office, Jim Bacon proved that there is no weakness in wearing your heart on your sleeve. One of the ways that Jim wore his heart on his sleeve was in his very public love and devotion to the woman he called ‘my darling Honey’. Jim’s wife, Honey, has been a constant support to him throughout their marriage and I know most particularly in the last, terribly difficult months of his life. They have always been a close couple, but also a close political partnership. I can honestly say that I do not think I have seen a closer partnership in politics. When Honey said on Sunday that Jim had loved his job leading Tasmania as much as he loved her, all those who knew them understood she was speaking of the greatest possible measure of devotion.

Our thoughts and our deepest sympathy are with Honey, with Jim’s sons Scott and Mark, and his stepson, Shane; with his mother, Joan, and sisters Jenny, Mary and Wendy. The tragedy of Jim’s early death will be felt most keenly by his family, but his loss is felt by us all—across Tasmania, the labour movement and the Labor Party. There are
very few people who can truly be said to be irreplaceable, and our friend and comrade Jim Bacon was one of those few. Tonight we mourn his loss.

Bacon, Hon. James (Jim) Alexander

Senator GREIG (Western Australia) (10.04 p.m.)—I too am honoured tonight to be able to pay tribute to the late Jim Bacon. I met him very briefly. From memory, it was September last year when I had flown down to Tasmania by invitation to attend the induction—I think that is the term—of those Tasmanians who were in receipt of Australia Day awards. I remember it being a cold day. It was also a difficult day for me because, while I had arrived in Tasmania, my luggage had not and I had to scramble at the last minute to find suitable attire to attend Government House. But it was a fine day, most particularly because I was delighted to see my friends and colleagues Rodney Croome, Nick Toonen and Richard Hale receive Australia Day awards—an AM, in Rodney’s case—for the work they had done for gay and lesbian human rights reform.

Senator Faulkner mentioned in his contribution, in a brief way, some of the work that Jim Bacon had presided over and helped implement in terms of law reform for lesbian and gay people. I want to take an opportunity tonight to expand on that a little more, because the work that was done there was profound and resonated internationally. In doing so I should acknowledge that I am borrowing here from an eloquent contribution from Rodney Croome himself, who posted this on his web site in recent days. I feel it is probably best that I offer that as a contribution, perhaps in a general sense on behalf of the gay and lesbian community but particularly for gay and lesbian Tasmanians. Rodney wrote the following, and I endorse the sentiment:

Jim Bacon was the best Premier lesbian, gay, bisexual and transgender (LGBT) Tasmanians have ever had.

His Government enacted some of the best anti-discrimination and relationship laws in the world. Tasmania Together, the state blueprint he initiated, commits the island’s government and people to reducing levels of discrimination against LGBT people—a goal no other society on earth has ever tackled. His Ministers have overseen the development of national best practice sexuality and gender diversity policies in education, health and the public sector. As Tourism Minister he gave the go-ahead for the best gay and lesbian community marketing strategy in the country.

But Bacon’s contribution to sexual equality went far deeper than this. Not long after being elected he became the first Australian government leader to open an LGBT community event—a photo exhibition in Salamanca Place. When I thanked him his response was that it was nothing remarkable, after all he was Premier for all Tasmanians. Through small gestures like this Bacon did something very important, he started bringing LGBT Tasmanians in from the cold and including us as a valued part of the Tasmanian family. There aren’t words to describe how important this has been for a community which has suffered brutal legal and social persecution for decades, whose young have been driven out and whose old have lived in fear. In the battle against hatred, fear and exile, in the historic struggle to reconcile being Tasmanian and gay, Bacon played an invaluable role.

Of course there was disappointment and frustration at the short-comings of the Bacon Government, particularly its decision, apparently with his backing, not to allow same sex couples full adoption rights. But as legitimate and genuine as this anger was and remains, it also highlights how high expectations have risen and how much Tasmania has changed, thanks, in part, to Bacon himself.

Jim Bacon understood that there was something important at stake when it came to LGBT Tasmanians, something beyond the victories and defeats of parliamentary politics. He grasped that by transforming its attitudes to sexual minorities Tasmania was transforming itself. Shame about a convict past “stained” with unnatural vice, dis-
dain for the sexual chaos that once prevailed here, anxiety about being second-rate and worthless—if Tasmania could learn to stop projecting these traumas on to its LGBT citizens, maybe it would finally face and overcome them. It was no coincidence that, in an attempt to illustrate his vision for the New Tasmania, Bacon’s most recent speech to the National Press Club highlighted the fact that Tasmanians are now immensely more tolerant of their homosexual compatriots than they were once believed to be.

If it is true that we are a genuinely open-hearted people, and without doubt I believe it is, one of the men posterity will honour for this is the late Jim Bacon.

I share and echo that contribution, which speaks from Tasmania, and make the point that the reforms, particularly the most recent reforms in Tasmania, have been a beacon right around Australia. Many people in the community, particularly gay and lesbian people, deeply mourn his loss and take the opportunity to applaud his achievements and to ensure that the work he did in this area is not forgotten. Clearly, there was more to Jim Bacon than I have spoken of here tonight, but I wanted to be specific in my contribution. It struck me that, in the many pages of worthy contributions we have seen—particularly in the print media in recent days as they explored the life of Jim Bacon—little, if any, attention was given to this area and for many people, it was the most important. I offer my sincere condolences to his wife, Honey, and to his children.

**Senator Hon. James (Jim) Alexander Barnett** (Tasmania) (10.11 p.m.)—I rise to support many of the sentiments of my Senate colleagues in relation to Jim Bacon—a great warrior for his party and a man respected on all sides of politics. His loss is sad and tragic. His contribution to Tasmania was substantial indeed in terms of not only the economic, social and cultural contributions but the confidence that he instilled in the people of Tasmania. There is no doubt that he instilled hope for all of us. That legacy remains today, and I expect that it will continue. My heart goes out to Honey Bacon and his family, and I extend my sincere sympathy to them.

I had occasional business contact with Jim Bacon when I was a consultant of some 13 years prior to my entry into the Senate. We had our run-ins across the political divide since my time as a Liberal senator for Tasmania. But I do believe that, if a politician earns the respect of both sides of politics, we can ask no more of them. Naturally, I echo many of the tributes spoken in the past week in the public domain in Tasmania and elsewhere. Jim Bacon demonstrated in my view that he was a courageous man, who, in his final months gave a precious gift to young Australians, with his sincere plea to them to either give up or never take up smoking.

I have a preoccupation with health issues and a special interest in this area. Like all of us here, I despair over our young children who are sucked into the terrible trend of smoking tobacco—remembering that approximately 19,000 Australians each year die from smoking related causes. Studies in the late 1990s showed that 276,000 secondary school students in Australia were current smokers and that, if they continued with this dreadful habit, a staggering 138,000 would die prematurely. That was in the late 1990s. But the alarming aspect of this is that, while there has been a downward trend in adolescent smoking, this trend has now stopped and is in danger of increasing again. Amidst this tragedy of Jim Bacon’s premature death, I sincerely hope and pray that his warning to smokers of all ages will prompt many people to either stop or at least consider their future and the impact their loss would have on their family and their loved ones.

A member of my staff nearly died from smoking, and I know that it is a source of...
despair and anguish for him to see teenagers puffing gleefully on cigarettes in public places. I urge parliaments and interest groups across Australia, such as the Cancer Council, to continue the fight against tobacco smoking and addiction. I congratulate the Cancer Council on the work that they do in Tasmania and across this country. To this end, I salute Jim Bacon’s courage and the frankness he displayed when he announced his terminal illness to the public. I know that we all share his genuine and heartfelt fears for our young and I applaud him for that.

Bacon, Hon. James (Jim) Alexander

Senator COLBECK (Tasmania) (10.14 p.m.)—I too would like to place on record my sentiments with respect to the tragic passing of former Tasmanian Premier Jim Bacon on Sunday. Jim Bacon was a formidable political foe. It is for the strength of his leadership, in particular, that he won the respect of Tasmanians and members of the political community across the state and across the country. That respect has been clearly demonstrated over the last few days, since his tragic passing at the age of 54—which in anyone’s language is much too young. To see a political career such as his cut short in the way it was is not something that anyone on any side of the political divide would like. Some might say that Jim Bacon was lucky to be in the right place at the right time. But to use those circumstances—to put into place the policies and take advantage of those circumstances—is what Jim Bacon won respect for. It is all very well to be in the right place at the right time, but you have to use those circumstances in the best possible way.

Jim Bacon’s passion for his state is something that will be remembered for a long time and respected enormously by not only those who worked with him within his party but also those who were opposed to him politically. Some people even called him a frontman and said that there were others behind the scenes pulling the strings. I think the reality has been clearly demonstrated since he was forced to leave the parliament early this year. The strength of his leadership and his capacity to hold the Tasmanian government and Labor Party together with that strength of leadership has been clearly demonstrated since then. It has been a completely different ball game politically in Tasmania since Jim Bacon left the political scene. In that respect many people, whether their allegiances are to a Labor government, a Liberal government or some other combination, will sorely miss him.

One of the things that he brought to the Tasmanian parliament after a difficult time of minority governments was stability. The strength of his leadership and the stability that he brought to the parliament contributed significantly to the rebirth of Tasmania in economic terms and made a significant difference to the confidence of the people and of the business community across the state. It is beyond question that that political strength and leadership are going to be sorely missed. The issues and the topics that he made his own and that he drove include the growth in the tourism industry, which has become a significant driver of the state’s economy. In particular, the purchase of Spirit of Tasmania I, Spirit of Tasmania II and Spirit of Tasmania III, which has seen an influx of tourists and other people into Tasmania over the last couple of years, will be remembered as one of Jim’s significant legacies. But I think the most significant things—and I have mentioned them several times—are the strength of leadership that Jim displayed and his commitment to the state.

It has been mentioned that he was not a native Tasmanian. We Tasmanians can be quite insular in that respect—you have to earn your stripes—and it takes a long time in some circumstances to be accepted. Jim cer-
tainly was and, as I have said, he was re-
spected across the spectrum. I met with some
people in the tourism industry over the
weekend, and there was absolutely no doubt
that they saw him as a significant leader and
someone who had made a great difference to
their industry. It was one of his main pas-
sions, along with things like the arts. He
drove those things and made a significant
difference to the state. In a political sense,
you do not necessarily like to have a political
foe—someone against you on the other
side—with the strength of leadership of Jim
Bacon. But without question Jim is going to
be sorely missed in the political context in
Tasmania, no matter what your perspective
is—media, local public or political. I add to
the other sentiments that have been ex-
pressed here today and offer my deepest and
most sincere condolences to Honey Bacon
and to the rest of Jim’s family as they mourn
his passing this week in such tragic circum-
stances.

Senator BARTLETT (Queensland—
Leader of the Australian Democrats) (10.20
p.m.)—I formally add the voice of the Aus-
tralian Democrats to this debate expressing
condolences on the death of Jim Bacon, for-
ermer Premier of T asmania. When I was asked
at a media doorstop on Sunday, the day Mr
Bacon’s death was announced, for my one-
line impression of Mr Bacon’s premiership I
quite honestly said that it appeared to me that
his very clear and immediate legacy was an
enormous increase in the level of optimism
and positiveness about Tasmania among
Tasmanians, an atmosphere of increased
positiveness when you were there and an
improved perception of Tasmania among
people on the mainland.

Since then, that has been a very common
theme. Many people have chosen to focus on
his legacy of overseeing the transformation
from a state that was seen as being somewhat
in the doldrums, with something of a nega-
tive perception, almost a dying state—I am
overstating it, but there was almost that per-
ception—with all the young people leaving
for the mainland or overseas as soon as they
left school and an absence of vibrancy, vital-
ity and dynamism. There is no doubt that that
has been turned around in a remarkably short
time. I have had cause to visit Tasmania
many times since I entered the Senate around
seven years ago, and I had already developed
that impression between 1997 and now. Ob-
viously there are a range of factors there, but
when things go wrong we always point to the
government and when things have been posi-
tive we should acknowledge those who were
in leadership positions during that period.

His leadership was over a very short pe-
riod of time. He was elected to parliament in
1996 and, within two years, was Premier,
which was a very quick rise. The fact that
within that short space of time he was able to
be so successful and so dominant in that role
is obviously a clear recognition of his leader-
ship skills. I note that under Tasmania’s
unique and, I might say, very democratic and
highly desirable electoral system, Jim Bacon
was the biggest vote winner in the history of
his electorate of Denison and the third high-
est vote winner in any electorate at any elec-
tion since 1909. He was the highest vote get-
ter in Denison and, in the election in 1998,
the second highest vote getter in Denison. A
clear indication of his popularity is that, un-
der the Robson rotation system, people have
the opportunity to vote for a range of differ-
ent candidates from the one party and, there-
fore, the personal following or the personal
attractiveness of individual candidates is
much more clearly determined.

Mr Bacon, as leader of the Labor Party in
Tasmania, championed some policies and
approaches that the Democrats strongly op-
posed—and none more easily identifiable
than the Labor Party’s approach in Tasmania towards logging of old-growth forests. There continues to be an ongoing need to resolve that issue. But I think the reason why not just Tasmanians feel better about their state but also other Australians feel more positively towards Tasmania is the leadership Jim Bacon demonstrated on other initiatives over the period of his premiership.

It is an irony that, for a state that was often perceived as being very conservative and backward—I am not saying fairly perceived, but nonetheless occasionally perceived that way—it is literally leading the nation in enormous socially progressive reforms, particularly in the area of same-sex relationship laws. My colleague Senator Greig has already spoken about that. Not only were those reforms often seen as courageous but also they were implemented strongly and proudly. They were sold and promoted as desirable, worthwhile and positive reforms.

By showing that leadership, Tasmania has provided a goal to people around the rest of Australia who are still campaigning to remove discrimination. It has given an indication that changes like that can be made, that the sky does not fall in and that civilisation does not crumble, but rather that civilisation and society is strengthened. To be the leader at a time those laws were put through—laws that had to go through an upper house that is still often described as conservative and is not controlled by the Labor Party—I think again showed his strong leadership. That issue alone is a great legacy and a clear example. People now point to Tasmania and say that it has amazingly progressive innovations and socially forward-thinking and positive initiatives.

Jim Bacon had a strong record on promoting affirmative action for women. He took a strong approach in speaking out more positively than many in his party on refugees, for example. Whilst in no way would the Democrats pretend that we agreed with his policy approach on all issues, clearly this was somebody who was above average, who was above the crowd, and, to some extent, somebody who was right up in the top rungs of excellence in terms of leadership, in articulating a vision and in being able to share and infuse his community with that vision. That is something that I think anybody would be proud of. I am sure that amongst the great distress of his family there is a lot of pride in what Mr Bacon has achieved.

Our condolences go to his wife, Honey, and his sons, Mark and Scott, and Honey’s son, Shane. Fifty-four is far too young for anybody to die. He has left another legacy—a stark reminder that even the high-flyers can be struck down, and struck down very quickly, by diseases such as lung cancer. Nobody can think it is not going to happen to them. In one sense, even though it is a terrible way to do it, demonstrating that fact I hope will be an extra motivation and incentive to many people to give up tobacco or, hopefully, not to start. That is an area where I think we can and have to continue to do more. For his family, they will be grieving enormously and paying the awful emotional price of that outcome.

Despite the fact that 54 is a very young age, there is no doubt that Jim Bacon achieved an enormous amount. If any of us manage to achieve close to what he has achieved and leave that much of a mark, even with a far longer life, I think we will be doing very well. It is appropriate to mark his contribution, particularly to his state, obviously to the Labor Party and no doubt to his family and loved ones. The Democrats join in marking Jim Bacon’s contribution to political life in this country, his clear achievement in promoting Tasmania and making it a state to be proud of and a state that Australians look positively towards.
I have mentioned the debate on the future of logging in Tasmania and old-growth forests—and no doubt that will continue. There is also the promotion of some of the other industries that provide development and economic opportunities and that reinforce and promote the environment in Tasmania—I am particularly thinking of tourism. That is an area where again some positive steps were taken. I have no doubt, without pretending it is the magic solution for everything, that is the direction for a large part of maintaining a strong future for Tasmania. I am happy at any opportunity to promote and speak positively about the desirability of visiting a beautiful state and a wonderful place. It is also for the many people I know who have moved there—and it is a growing number of people that are moving there, at some pressure, I might add, because of the price of housing—a great place to live. A lot of that credit must go to Jim Bacon, and the Democrats join in condolences to his family to mark the achievements of his life both in parliament and in broader public life.

Bacon, Hon. James (Jim) Alexander

Environment: Policy

Senator EGGLESTON (Western Australia) (10.30 p.m.)—I too would like to record my condolences to former Premier Bacon’s family. He made a great contribution to the political affairs of Tasmania and was a great humanitarians.

I would also like to talk about the environment. The Howard government has been more committed to, and done more for, the environment than any other government in Australian history. This is demonstrated by the fact that in 2003-04, for the first time ever, environmental spending across all portfolios will exceed $2 billion. Indeed, spending on environmental initiatives in the agriculture and environment portfolios this financial year comes in at just under $1 billion and has more than doubled since the 1995-96 budget.

A measure of the significance that the Howard government places on the environment is that a sustainable environment has been nominated as one of the government’s nine strategic priorities. The Prime Minister chairs the sustainable environment committee of cabinet to ensure a whole-of-government approach to the environment. The centrepiece of the government’s environmental commitment is the Natural Heritage Trust. This $2.7 billion program represents the largest ever environmental commitment in the history of our nation. Its object is to conserve and rehabilitate Australia’s environment and natural resources. The trust provides funding for projects at the regional level as well as the state and national levels through four programs: Landcare, Bushcare, Rivercare and Coastcare.

The community component is delivered via the Australian government Envirofund. The priorities of the Natural Heritage Trust include protection and restoration of the habitat of threatened species; rehabilitation and conservation of native vegetation by reducing land clearing and via revegetation measures; the protection and restoration of water resources such as rivers and wetlands; addressing land degradation; the protection and restoration of marine and coastal environments; the control and eradication of weeds and feral animals and other threats to biodiversity; and the provision to landholders and community groups of conservation and resource management skills.

Over the life of the Natural Heritage Trust, more than 400,000 volunteers have contributed to in excess of 12,000 projects across the country. The trust has funded native vegetation projects on more than 700,000 hectares of land, including the protection of more than half a million hectares of native
vegetation, rehabilitation of more than 127,000 hectares of remnant vegetation and the replanting of more than 98,000 hectares of cleared land. An indication of the sheer scale of the work is that it has involved the planting of over 27,500,000 seedlings and the erection of in excess of 36,000 kilometres of fencing.

The rising tide of salinity, creeping over Australia’s land and waterways, is one of the most pressing environmental issues facing our nation. Salinity costs Australia about $3.5 billion each year through lost productivity and damage to infrastructure such as roads and buildings. In Western Australia, my home state, 1.8 million hectares in the south-west agricultural region is affected by salinity, and it is increasing at a rate of one football field per hour. Salinity not only has economic costs; it takes a toll on native plant and animal species. Indeed, it is estimated that, if the rising tide of salinity goes unchecked in the Western Australian wheat belt, up to 450 species of native flora and 250 species of fauna are at risk of extinction.

In response, the Commonwealth government, in conjunction with the states and territories, has developed a National Action Plan for Salinity and Water Quality. The Howard government has contributed $700 million, matched dollar for dollar by the states and territories. Under the $1.4 billion plan governments will work hand in hand with local communities to tackle salinity. The plan does not impose top-down solutions but engages communities and involves the development of regional plans and measures that are appropriate to each region. It will concentrate on 21 priority regions and aims to control salinity and improve water quality.

The government’s Environment Protection and Biodiversity Conservation Act 1999 was groundbreaking legislation and represented a long overdue overhaul of the Commonwealth’s environmental laws, which dated from the early 1970s. The act represents a vast improvement on the legislation that it replaced, and it has to be regarded as one of the principal achievements of the Howard government in the area of the environment. Natural resource management is a responsibility of the states, but the fact is that environmental issues do not stop at state boundaries. The act provides a national scheme to protect and conserve Australia’s environment and focuses on seven matters of national environmental significance: world heritage properties; national heritage places; Ramsar wetlands of international significance; nationally listed threatened species and ecological communities; listed migratory species; Commonwealth marine areas; and nuclear actions, including uranium mining. An action that is likely to have a significant impact on a matter of national significance is subject to an assessment and approval process. The act was a major step forward in protecting the environment of Australia.

The Howard government has been committed to sustainable forestry practices that provide an appropriate balance between maintaining a viable forestry industry and protecting old-growth forests. The Howard government has undertaken regional forest agreements with the states which have had the outcome of protecting forests throughout this country. There are 10 RFAs in four states: Tasmania, Victoria, New South Wales and Western Australia. It is disappointing that the Western Australian Labor government has chosen more or less to tear up the agreement with their state. In their blind pursuit of the deep green vote and for base political reasons and in total disregard for the welfare of timber communities in the south-west, the Gallop government’s forest management plan allocates just 131,000 cubic metres of jarrah sawlogs a year. The RFA required an allocation of 286,000 cubic me-
tres per annum. The federal government was willing to agree to an allocation of 200,000 cubic metres on the basis that this is a sustainable level and would have ensured the viability of the forestry industry and preserved jobs, but the Gallop government’s allocation falls short of this and showed a disregard for the future of the forestry industry and the workers in it.

Turning to the Kyoto protocol, the Howard government has made it quite clear that while it will meet the greenhouse requirements of the Kyoto protocol it has no intention of signing this treaty because it is fundamentally flawed in that it is not globally comprehensive. It excludes three-quarters of global greenhouse gas emissions, does not require major emitters such as China and India to meet emission reduction targets and, because it is not globally comprehensive, has the potential to damage the international competitiveness of Australian industry, thereby threatening our economic prosperity and costing jobs. The Howard government is committed to fostering the development of the renewable energy industry through various initiatives such as the MRET scheme and various other programs. In summary, the Howard government has an outstanding record on environmental policy, which no government in the history of this country can match.

Save the Bilby Fund

Senator LUDWIG (Queensland) (10.40 p.m.)—I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

Back in September 1999 I gave a speech regarding the efforts of Mr Frank Manthey and Mr Peter McRae, both National Park Wildlife Officers and founders of the Save the Bilby Fund.

The Save the Bilby fund seeks to halt the decline of the Bilby by establishing a protected breeding colony in the Currawinya National Park in Queensland.

The Bilby is a threatened native species in Queensland.

This small, nocturnal, ground dwelling mammal the size of a rabbit with large hairless ears was once found throughout Australia.

Sadly the only colonies remaining are in the west and northern states of Australia.

Numbers have dwindled to approximately 500. In my home state of Queensland they are now confined to the arid southwest corner.

Frank, Peter and their dedicated volunteers have constructed a purpose built, two metre high fence enclosing 25 square kilometres of the Currawinya National Park.

This enclosure is predator and feral animal proof and will soon become home for a breeding colony of Bilbies currently located in Charleville.

It is hoped that once numbers at the Currawinya enclosure reach a satisfactory level they will be able to release a number of Currawinya Bilbies into the surrounding area.

This project has been an enormous undertaking by the Save the Bilby fund both in cost and personal effort by Frank and his team.

The hardworking team has raised a considerable amount but more is needed.

For his efforts in undertaking this challenging project and in recognition of his great contribution to protecting the endangered bilby, Frank Manthey was awarded the Australian Geographic Conservation Award in 2002.

Frank has been a tireless, determined and passionate advocate not just on behalf of the Bilby, but of all our endangered native species.

I have had the pleasure of being present in Charleville when Frank has given one of his many nightly Bilby talks to passing tourists and must admit I was greatly impressed by his passion and down to earth nature. Frank truly has the ability to “spin a good yarn”.

That is why I am particularly pleased to see Frank and the Save the Bilby Fund combine with Dream Worlds Wildlife 4 Kids programme which aims to bring live Bilbies and other endangered species to
Queensland Schools as part of an education programme to promote the protection of our endangered native species.

This programme was officially opened in May at the Pacific Pines primary school on Queensland’s Gold Coast.

The Wildlife 4 Kids programme is a partnership with Dream World, Nestle, Peters, BP and of course the Save the Bilby Fund.

It is a hands on programme that allows children to come in to contact with wildlife such as the Blue-Tongue lizard, Spotted Python, Tawny Frogmouth, Sugar Glider and of course the Bilby.

To all present at the launch, it soon became apparent the programme was a big hit with the children, many of whom would never had a chance to see these wonderful creatures “up close”.

I am sure that the Wildlife 4 Kids programme has left a lasting impression on the children at the Pacific Pines state school.

I would like to congratulate Dream World staff Suzi Greenway, Lyndal Denis, Kevin Bradley, Larissa Dunlop and Dominique Burgess for putting together such a wonderful programme.

Nestle, represented at the launch by Mr Neal Turner and Mr Daryl Ruhe, should also be congratulated for entering into this education programme as should Peters and BP. I would like to pass on my special thanks to the Principal of Pacific Pines Kathy Edwards and her students for the hospitality that they extended to us all.

I would also like to thank Carryn Sullivan, the member for Pumicestone, for raising this matter in the Queensland State Parliament.

In a few short years Frank, Peter and the Save the Bilby Fund have achieved a great deal, however, there is still much that needs to be done.

I know that Frank and the Save the Bilby Fund have already provided support to assist in the recent construction of the Northern Hairy-Nosed Wombat fence and I have no doubt that he will continue to do so such as is his passion for protecting our endangered species.

In closing I would like to congratulate Frank Manthey, Peter McRae, the many volunteers that are part of the Save the Bilby Fund and those corporations and ordinary citizens that have supported them. You have done a magnificent job and I have no doubt that you will continue to do so long into the future.

Bacon, Hon. James (Jim) Alexander
Family Services: Child Care

Senator SANTORO (Queensland) (10.40 p.m.)—Like other speakers before me I wish to place on record my condolences to the family and friends and, indeed, the state of Tasmania following the death of the late Premier, Jim Bacon.

Tonight I want to talk about child care. Child care is a crucial part of the social infrastructure in Australia, particularly given the rising proportion of mothers who are in paid employment. According to the ABS there were 4,304,900 women in employment in Australia in May 2004. Obviously, many of these women are working mums. It is important to remember that, while the Labor Party opposite likes to characterise this as a financial imperative, for many women it is an is-
issue of choice. Because choice comes into the equation—as it always should and always will under Liberal governments—there is a natural corollary: choice should extend to matters of where parents choose to place their children in care during working hours.

Child care must be fostered by government policy and contributed to by public funding—and is, of course. About one-third of all long day care centres were classified as community based in June 2001, that is, centres operated by religious organisations, charities, local and state governments and various community groups. At the same date, more than nine out of 10 centres providing other types of child care including family day care, outside school hours care and occasional care were community based—in other words, not-for-profit organisations. Over time, more business based—in other words, profit-seeking—organisations will move into the field. That is natural. It must of course be regulated, but it also needs to be encouraged.

On this side of the chamber, we believe that governments should wherever possible facilitate rather than actually run things. That is not the position of the Labor Party, so far as it is possible to distinguish any position of the Latham Labor Party, and it is not the position of the unions. That should be no surprise. Liberals favour freedom and choice; Labor favours prescription and direction. That is the clear political divide.

There is an industrial campaign under way to raise the wages of child-care workers in the independent sector. As part of this campaign Australians are being regaled with union inspired tales of horror about working conditions and the like. It is true that child-care workers are not highly paid. There are certainly arguments it is feasible to advance in favour of paying them more. But these arguments are generally not the tired old ones that have been put by the unions. The subtext is that the unions do not want private enterprise in the child-care sector. What the unions want is access to a bigger membership pool so they can give more money to the Labor Party.

The Australian Services Union, according to an interesting item on its web site dated 31 May 2004 and headlined ‘Why don’t governments care for our children?’ says that all Australians should have access to equitable and quality child care. There is no-one I know who would argue with that. But the ASU also says that this is what we have paid for through our taxes. A lot of people will argue with that, and so they should. That is the easy line, that is the dumb-down Latham line—make everything a meaningless slogan. We pay taxes to fund all manner of things.

The Howard government has put more into child care than any other Australian government, and there are 44,000 more child-care places in this budget alone. It has outlaid $19.2 billion in extra assistance for Australian families, including an immediate bonus that will be paid before June 30. It has hugely increased support for new mothers—a maternity payment of $3,000 for each newborn from 1 July 2004, rising to $4,000 from 1 July 2006 and $5,000 from 1 July 2008. The Howard government has done this while keeping the budget in balance and providing tax cuts worth $14.7 billion and superannuation measures worth $2.7 billion. These measures are self-help measures—measures designed to let people choose for themselves.

We on this side of the chamber trust Australians and believe in their innate common-sense. There is no doubt that provision of services is a critical factor for government at every level. The minister for children says, quite frankly, that in regard to child-care places available the situation is patchy. Governments at all levels need to work on that,
but it cannot be done simply on the basis that the federal government throws money. Far better that it be done in ways such as those carried out in Brisbane by a new organisation headed by Mr Chris Buck through the innovative development of new concepts and choices in long day child care. Brisbane City Child Care is a new concept. It provides what I am informed is the largest nursery creche in Australia and a full sized kindergarten. Its managers say it has the potential to cater for extended hours, and even 24-hour care, should demand for that exist—for example, among hospitality or nursing shift-workers. And they plan similar operations in other Australian capital city CBDs. In short, it is an innovative operation that demonstrates how the dynamics of private enterprise are able to deliver services that people actually want.

Last month the member for Melbourne Ports made two speeches in the House of Representatives on the issue of child care and specifically against a large and long established private operator ABC Child Care. I want to make some comments on what the honourable member, Mr Michael Danby, said. I preface these comments by saying that I have generally found Mr Danby good to deal with, especially on matters that relate to his special interest—the Jewish community. However, his unfair and intemperate criticism is surprising.

ABC Child Care’s owner, Mr Eddie Groves, and a director of the company, former Brisbane lord mayor Sallyanne Atkinson, were Mr Danby’s principal targets in his assault on the company. He repeated the claims of others that ABC Child Care centres refuse to employ sufficient cleaners, refuse to pay staff a decent wage and require staff to bring their own music to play to children. He unfairly drew Mr Groves and Ms Atkinson, whom he inadequately described as a former Liberal candidate, into a political argument in his home state. He said Mr Groves gave $10,000 to the Queensland Liberal Party in 2002-03 and that in May this year the federal Treasurer visited one of his company’s child-care centres in Brisbane—and he left lingering in the air the malodorous impression that he believed these two events were linked.

Following this, Mr Groves appeared on the Nine Network’s Sunday program on 31 May. The presenter noted that Mr Groves featured in the BRW rich list and he was asked, of his child-care centres business, ‘Are you just in there to rip out money?’ Mr Groves responded—after saying that the question was absolutely ridiculous, which it was—that while $12 million profit was a large amount, smaller concerns probably made proportionately bigger profits. I draw the attention of honourable senators to the proper perspective he brought to the issue when he said:

Everybody wants to talk about the $12 million we made, but nobody wants to talk about the $20 million we’ve put back into centres that we’ve purchased in the past two years.

In relation to sporting sponsorship, it is certainly true that ABC Child Care is a major sponsor of the Brisbane Bullets basketball team. Mr Groves is a self-made man. He is an achiever—one of the tall poppies that the Labor Party loves to cut down. Like Australian businesses of all shapes and sizes everywhere, ABC Child Care is a sports sponsor. And everyone should understand the lack of logical connection between sponsorship and staff wage negotiations. These are corporate decisions whose utility the Labor Party and the unions are singularly ill-equipped to judge. Labor and the unions treat private business, even small business, as an arm of the welfare system. It is true that there are some supply problems in private child care. These are generally a result of factors outside federal control—something else that Labor
and the unions would like people to over-
look. But the solution is not to attack the pri-
vate sector providers. The member for Mel-
bourne Ports should know that.

ABC Child Care is a private provider,
which Mr Danby himself concedes does a
good job. Ms Atkinson is a community
leader in Brisbane whose position as a direc-
tor of ABC Child Care is questioned by no-
one. Mr Groves is a businessman who runs a
profitable business which is a public benefit.

Would senators opposite please note that this
is not a crime against the people. Mr Groves
and his company are good corporate citizens
and they do not deserve to be subjected to
unfair abuse in the national parliament.

Bakers Creek Air Disaster: 61st
Anniversary

Senator SANTORO (Queensland) (10.48
p.m.)—I have prepared another important
speech relating to the Bakers Creek air crash
which occurred in my home state of Queen-
sland in 1943. In view of the lateness of the
hour, and motivated and inspired by the ex-
ample just set by Senator Ludwig, I seek
leave to incorporate this contribution.

Leave granted.

The speech read as follows—

A year ago in this place, I spoke about the indeli-
ble connection between my state of Queensland
and the American nation in the context of the
Bakers Creek air crash in 1943 at the height of the
Pacific war.

Tonight I want to say a few more words about this
event, because after more than 60 years of si-
ulence, it is now something that is marked, in an
honourable way, on both sides of the Pacific
Ocean.

At this time the world faces new threats, from
enemies who do not field formed divisions or
conduct war in the fashion of the past.

These enemies do not declare their hand. They do
not attack military targets or troops of the enemy.

They fly planes into buildings. They explode
bombs. They behead hostages on the Internet.

Combating them, and beating them, will take a lot
of courage. It will require immense fortitude. It
will cost a lot of money and it may carry a heavy
cost in lives. These are the imperatives of the age
of terror.

It is fashionable in some circles to suggest that
the war on terror is an exercise in hyperbole and
that those who warn of its real dangers and poten-
tial extent are serving their own political ends
rather than those of global amity.

Those who make these statements, even those
among them who do so apparently believing them
to be true, are the modern equivalent of Lenin’s
useful fools, those who mistakenly thought that
they were fellow travellers with the peaceful pur-
poses of international communism.

Six decades ago, when the Americans were our
active military allies in another dreadful conflict,
many thousands of them were based in or tran-
sited through Queensland.

It was at that time that the 1943 Bakers Creek air
-crash took place. It took the lives of 40 people
and remains Australia’s worst air disaster.

The site of the crash, some of the circumstances
of it, and the human toll it took, have been the
subject of annual memorials in the Mackay dis-
-trict of Queensland for a good many years.

But it is only very recently that the circumstances
of the crash—it was an accident, not the result of
enemy action—have been fully revealed to the
families of the Americans who died near Mackay
all those years ago.

In Washington last week—on June 14—the 61st
anniversary commemoration of the Bakers Creek
air crash was held at the National World War II
Memorial in the American capital. It was the first
time the accident had been commemorated on
American soil.

At the ceremony, Robert S. Cutler, a George
Washington University professor and executive
director of the Bakers Creek Memorial Associa-
tion in the USA, made some poignant remarks to
which I should like to refer this evening.

It is very fitting, I believe, that something of what
he said in Washington last week should be re-
corded in the proceedings of the Australian Senate.

Professor Cutler, who with his Australian associates has researched the Bakers Creek air crash story and pushed for recognition of this tragedy of the Pacific war, said this at last week’s ceremony:

Last year, two dozen of us, including 12 family relatives of the crash victims, travelled to Mackay, Australia, to commemorate the 60th anniversary of the Flying Fortress plane crash that took the lives of 40 American servicemen in World War II. It was the worst aviation disaster in the Southwest Pacific war. More disturbing—most of their families were not told the facts of how or where their loved ones died in WW II.

This year, we are in Washington to mark the 61st anniversary of that crash. The event marks the first time this tragic wartime accident is commemorated on American soil. For the past 12 years, ceremonies have been held in Mackay, Australia, at a permanent monument near the Bakers Creek crash site.

We believe that this newly dedicated National WW II Memorial is also an appropriate venue to pay public tribute, closer to home. We hope this ceremony will help facilitate closure for those casualty families who only recently learned of the hushed-up WW II incident.

It is useful to recall—as Professor Cutler did in his speech at the Memorial in Washington last week—that at the time of the Bakers Creek crash, the world was weary from years of war. The Allies had just defeated the Germans in North Africa, and the Battle of Stalingrad ended in a Soviet victory. But here in the Southwest Pacific, the situation was grim and uncertain.

The Allies had just launched their counter-offensive against the Japanese forces advancing in New Guinea and still threatening an invasion of Australia.

The fortunes of war bring both victory and defeat. They take lives and they save lives.

It is the same in any conflict, declared or undeclared.

The cost is always too high in blood and treasure—but freedom and independence, human advance and democracy, must always be defended.

So it was in 1943. So it is in 2004.

The links that bind the American and Australian nations together are those of heritage, custom, deep faith and an unshakeable belief in the benefits of true freedom, individual responsibility, and the democratic system of self-government.

Such links are enhanced by mutual interest in honouring the past and the people of the past, both the dead and the living.

Our links with the Americans span the generations: they are part of our history, and they are our present, and they will be our future.

That's why Bakers Creek, now at last fully open to public remembrance in both our countries, is so important. It is important also for the families of those who died on 14 June 1943 in the service of their nation and in defence of ours.

Thanks to the work of many good people in both Australia and America, only 15 of the 40 families who lost loved ones in the crash remain to be notified.

Over the past year, Bakers Creek Memorial Association volunteers have been able to contact seven families. We wish them speedy success in completing that aspect of their work.

Last year, it was my privilege to be involved in the visit of the American party to Queensland and to Mackay.

It was during that visit that the memorial to the crash victims was formally dedicated, at the site that Mackay people had kept sacred through the years.

It was an inspiration to me how—across the years and across the world’s widest ocean—such strong links had been established between the RSL in Mackay and an American group formed in 2000, the Bakers Creek Memorial Association.

The purpose of the association is to publicise the Bakers Creek air crash story in the United States; to assist the work of the Mackay RSL historian, Col Benson, to locate family relatives of the crash victims; and to raise funds for the placement—now achieved, as of last year—of a scale model replica B-17C at the Memorial near Mackay.
As I said earlier, news of the crash was suppressed because of wartime censorship.

But as Professor Cutler made a point of saying at last week’s ceremony in Washington, the editor of the Mackay Daily Mercury managed nonetheless to publish an editorial that, while veiled in its references, expressed public sorrow about the tragedy.

It particularly affected Mackay people because, during their time in the area on leave from the war, many of the victims had made friends with the locals.

At the time it seemed to Mackay people almost as if they had lost members of their own families.

This is what the editorial said—written by the then editor, Harry Moore, and published on 15 June 1943:

No matter how we might grow accustomed to casualty lists, we can never grow hardened to them. Their poignancy is not in the names and numbers, but in the meaning of the memories …

It is our common destiny to take these blows, but it is our common faith also to share the grief of our neighbour—and this we do today.

Amen to that. Let us always honour and never forget sacrifice in defence of freedom threatened by tyranny.

**Roche AO, Mrs Imelda**

**Senator EGGLESTON** (Western Australia) (10.49 p.m.)—I seek leave to have Senator Coonan’s speech incorporated in Hansard.

Leave granted.

*Senator Coonan’s incorporated speech read as follows—*

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (10.49 p.m.)—I rise tonight to acknowledge the achievements of a distinguished Australian. Imelda Roche AO, the co-founder of Nutri-Metics, recently celebrated her 70th birthday in the company of her husband Bill, her family and many friends.

Hers is a remarkable journey. Born into humble circumstances, Imelda soon came under the influence of a strong grandmother who instilled in her an unshakeable belief in her own self worth and an ambition to succeed.

As with so many Australians her age, Imelda had little formal training having left school in year 10. But this was hardly going to stand in the way of a woman whose grace and determination would see her become one of Australia’s most successful businesswomen through the global Nutri-Metics business.

Nutri-Metics grew out of Imelda and Bill’s talents and successes as direct marketers. Early in life, Imelda had a diverse range of jobs including, journalism, bookkeeping and secretarial work. While working as a Manager for a staff recruitment agency she met her husband Bill. To increase financial security for their family, Imelda and Bill established a direct selling business in their spare time.

Before long the limited range of stock sold in the direct selling business had expanded into clothing and Roche Fashions was born. When the decision was made by Imelda and Bill to leave their respective jobs to concentrate full-time on their new business, the reaction from family and friends was mixed. Some believed that they were courageous, but most believed that it was a mistake to leave good stable jobs for an unknown venture.

Without formal tertiary education, capital or experience, Bill and Imelda worked full-time for their fledgling company. When reminiscing of these times, Imelda noted the one strength that was necessary to succeed:

“What we did have was unlimited youthful enthusiasm and a determination to change our life prospects.”

Imelda and Bill lived by that famous quote:

“Some men see things as they are and ask why. Others dream things that never were and ask why not.”

Over the next 10 years the direct selling business expanded dramatically throughout Australia.
In the early years Bill and Imelda sold clothes door to door. Of these early years Imelda said, “It gave me a very strong appreciation of how hard some people have to work for a dollar.”

In 1968, Imelda responded to an advertisement in the paper from an American Direct Selling Company looking for management to open its company in Australia. Imelda and Bill opened up Nutri-Metics Australia soon after.

Over the next 20 years, Nutri-Metics grew to become the largest cosmetic company in Australia with the largest direct selling salesforce.

In 1991, Imelda and Bill, purchased the worldwide interests of Nutri-Metics. The purchase of the international company, which was operating at the time in over 16 countries, after buying into the business as the owner of a national enterprise, is one of the greatest corporate success stories in Australian business.

Nutri-Metics was sold in 1997 to Sara Lee Corporation. At the time of sale, Nutri-Metics was trading in 20 countries and had a salesforce of over 250,000 people.

When asked for the secret behind the Nutri-Metics success, Imelda Roche said, “the simple answer is working with and through others.” Imelda and Bill sought professional advice when they could afford it and concentrated heavily on building relationships with suppliers and staff.

In 1997, Imelda was internationally recognised as one of the 50 leading female entrepreneurs.

Those who know Imelda well can be in no doubt that her passion in her life is about Bill and her family—her four children and ten grand children.

Imelda was a woman ahead of her time, successfully juggling a high profile career and the demands of looking after a family.

But despite her outstanding success and appearance in the BRW rich list, Imelda has never forgotten those less fortunate.

Throughout her life Imelda has generously given to many charities and institutions. She has also served on a number of Boards and Committees across a diverse range of fields—health, education, youth, environment, economic, entrepreneurial and sport.

The most notable of these representations include:

- St Vincents Hospital
- Sisters of Charity Foundation
- Garvan Medical Research Foundation
- Bond University
- International Development Program of Australian Universities
- Macquarie University Graduate School of Management
- APEC Advisory Council
- Trade Policy Advisory Council of the Australian Government
- Committee for Economic Development of Australia
- World Federation of Direct Selling Associations
- Centennial Park and Moore Park Trust
- Sydney Organising Committee for the Olympic Games

Imelda’s untiring contribution to many philanthropic ventures typifies her spirit of community and generosity.

Imelda’s work with charity was done out of a desire to help others and to share, with those interested, the knowledge that she and Bill used to succeed.

Imelda’s work with charity was recognised by the Australian Government in 1995 when she was appointed an Officer in the General Division of the Order of Australia.

Imelda Roche’s dedication to Australian youth is typified in her untiring work for organisations such as the Australian Young Leaders Program and the Duke of Edinburgh’s Award Scheme.

Imelda’s passion for teaching financial literacy to Australian youth mirrors my own recent announcement of the Consumer and Financial Literacy Taskforce. On this topic Imelda is quoted as saying,

“We need to teach all children the basics of financial responsibility, investment and enterprise, which encompasses proper preparation for well considered business risk-taking. And it is never too early to start.”

Imelda believes that the learning of financial skills, greatly enhances the prosperity of the na-
tion. This knowledge also teaches the youth of today to appreciate enterprise and the important role that job creators play in the broader economy.

Imelda you are a great Australian and you inspire those who cross your path or hear your story. In particular you are a role model for women who want to continue their businesses, in nurturing a family and giving back to the community.

From my association with you, I know that you are not the sort of woman to rest on your laurels. You regard everything you do as work in progress. I can think of no better gift than to wish you continued good health, success and happy days with your family and Bill.

Happy Birthday Imelda.

Senate adjourned at 10.50 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:


Treaties—

Bilateral—Text, together with national interest analysis and annexures—

Agreement between the Government of Australia and the Government of the United Arab Emirates relating to Air Services, done at Dubai City on 8 September 2002.

Agreement, done at Melbourne on 10 May 2004, between Nauru and Australia concerning additional police and other assistance to Nauru.

Multilateral—Text, together with national interest analysis and annexures—


WIPO Performances and Phonograms Treaty, adopted by the
Diplomatic Conference at Geneva on 20 December 1996.

United Nations—Optional Protocol to the International Covenant on Civil and Political Rights—Human Rights Committee—Communications—
No. 1080/2002—Views.
No. 1239/2004—Decision.

Tabling

The following documents were tabled by the Clerk:

Currency Act—Currency (Royal Australian Mint) Determination 2004 (No. 4).

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part—
107, dated 28 May 2004.


Sydney Airport Curfew Act—Dispensation granted under section 20—Dispensation No. 6/04 [2].
The following answers to questions were circulated:

**Fuel: Ethanol**
*(Question No. 1302)*

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 19 March 2003:

(1) Has the Minister received written or oral representations from representatives of the Manildra group of companies, including but not necessarily limited to Manildra Energy Australia Pty Ltd, concerning government support for the ethanol industry; if so: (a) on what dates were those representations received; and (b) in what form were they made.

(2) Has the Minister received written or oral representations from representatives of the Australian Bio-fuels Association concerning government support for the ethanol industry; if so: (a) on what dates were those representations received; and (b) in what form were they made.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Yes.
   (a) The Department’s records show that the Minister received written representations on 4 October 2001 and oral representations on 23 May 2001, 28 May 2001 and 21 March 2002.
   (b) The Department’s records show that the written representations were made through a letter and oral representations were made through meetings and an ‘Ethanol Roundtable’.

(2) Yes.
   (a) The Department’s records show that the Minister received written representations on 18 June 2001 and 30 November 2001 and oral representations on 28 May 2001 and 21 March 2002.
   (b) The Department’s records show that the written representations were made through letters and the oral representations were made through a meeting and an ‘Ethanol Roundtable’.

**Immigration: Visitor Visas**
*(Question No. 2680)*

Senator Brown asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 8 March 2004:

(1) With reference to visitor visa applications received from Fijian nationals in the past 2 years:
   (a) how many applications were lodged;
   (b) (i) how many applications were: (A) approved, (B) rejected, and (C) withdrawn, and (ii) what percentage of applicants are still being processed;
   (c) how many applications were initially rejected but accepted on appeal;
   (d) what was the average time for processing an application;
   (e) what was the average charge, expressed in Australian dollars, levied on the applicant for processing the application;
   (f) what was the average bond, expressed in Australian dollars, that successful applicants were required to lodge as a guarantee that they would leave Australia in the required time; and
   (g) of those Fijian nationals refused a visa, how many were offered an interview in which they could present their case for a visa.

QUESTIONS ON NOTICE
(2) What are the corresponding statistics for Fijian nationals applying for a work visa.

(3) What are the corresponding statistics in relation to both visitor visa and work visas, for applications from Nepalese nationals.

(4) What are the corresponding statistics in relation to both visitor visa and work visas, for applications from British nationals.

(5) (a) Are there guidelines used by departmental officers when deciding whether visa applications should be approved or rejected; if so, are these guidelines publicly available; and (b) is the presence of family members in Australia ever used as a reason for rejecting a visa application; if so, under what circumstances.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) FIJIAN NATIONALS

The information below refers to visa applications from Fijian nationals for the following Visitor visa Subclasses:

- Subclass 456 - Business (Short Stay);
- Subclass 459 - Sponsored Business Visitor (Short Stay);
- Subclass 675 - Medical Treatment (Short Stay);
- Subclass 676 - Tourist (Short Stay);
- Subclass 679 - Sponsored Family Visitor (Short Stay);
- Subclass 685 - Medical Treatment (Long Stay); and,
- Subclass 686 - Tourist (Long Stay).

(a)-(b) Visitor visas

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<tr>
<td>Applications lodged</td>
<td>16,544</td>
<td>15,054</td>
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<tr>
<td>Applications withdrawn</td>
<td>368</td>
<td>260</td>
</tr>
<tr>
<td>Applications approved (visas granted)</td>
<td>13,250</td>
<td>12,551</td>
</tr>
<tr>
<td>Applications refused</td>
<td>2,842</td>
<td>2,229</td>
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<tr>
<td>In progress*</td>
<td>504 (3.05%)</td>
<td>408 (2.71%)</td>
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</table>

* Not all applications are decided in the year they are lodged

(c) Review: Not all visa-related decisions can be reviewed by the Migration Review Tribunal (MRT). Section 338 of the Migration Act 1958 (the Act) specifies which decisions are reviewable by the MRT and section 347 of the Act specifies who may apply for review.

Decisions to refuse a Visitor visa application can only be reviewed if the applicant’s intention was to visit a close family relative (parent, child, spouse, brother or sister) who was referred to in the application and who is an Australian citizen or permanent resident.

Where the Visitor visa applicant does not indicate in their application that they have a close family member in Australia, a refusal decision on that application does not have appeal rights.

Eleven visitor visa refusal decisions in 2001-02 in regard to Fijian nationals were appealed at the MRT. Of these, three (3) were approved on appeal, four (4) upheld the original decision and four (4) were otherwise finalised. 12 decisions were appealed in 2002-03. Seven (7) were approved on appeal and in five (5) cases the original decision was upheld.

(d) Processing: The following table lists the median processing time per application, in days, for Visitor visa applications lodged by Fijian nationals.

Median processing time in days for visitor visa applications lodged by Fijian nationals.

QUESTIONS ON NOTICE
(e) Charge: The charge for processing a visa application varies according to the type of visa being sought. Charges are detailed in Schedule 1 of the Migration Regulations. Visa application charges for Visitor visas are listed in Attachment A.

(f) Bonds: Visa subclass 679, the Sponsored Family Visitor visa, is the only visa subclass which has a bond mechanism. A bond may or may not be sought in an individual case. There is no bond mechanism for any other visa subclass.

The average bond in the cases of Fijian nationals was AUD$8,422 in 2001-2002 and AUD$9,568 in 2002-2003.

(g) Interviews: The Department does not record exact numbers of applicants interviewed for Visitor visas.

(2) Business visas

There is no “general” work visa. People seeking to undertake employment in Australia are generally required to possess special skills and qualifications. In most cases, sponsorship by the proposed employer is required. The subclass 457 Temporary Business (Long Stay) visa is such a visa. It allows approved businesses to sponsor skilled personnel from overseas to fill positions that cannot be filled with suitably qualified Australian citizens or permanent residents. There are strict requirements regarding the skills people must have in order to be eligible for this visa.

Subclass 457 Temporary Business (Long Stay) visas**

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<tr>
<td>Applications lodged</td>
<td>136</td>
<td>85</td>
</tr>
<tr>
<td>Applications withdrawn</td>
<td>16</td>
<td>7</td>
</tr>
<tr>
<td>Applications approved (visas granted)</td>
<td>80</td>
<td>72</td>
</tr>
<tr>
<td>Applications refused</td>
<td>42</td>
<td>29</td>
</tr>
<tr>
<td>In progress*</td>
<td>35 (25.74%)</td>
<td>12 (14.12%)</td>
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</tbody>
</table>

* Not all applications are decided in the year they are lodged

** Subclass 457 applications can include more than one person, such as family groups.

Review: Data on subclass 457 applications which were refused and then proceeded to appeal at the MRT is not readily available on a nationality or processing post basis.

Processing: The median processing time for subclass 457 visa applications lodged by Fijian nationals was 45 days in 2001-02 and 62 days in 2002-03.

Charge: The visa application charge for subclass 457 visas is $165.

Bond: There is no requirement or mechanism for sponsors to lodge bonds in regard to subclass 457 visas.

Interviews: The Department does not record numbers of applicants interviewed for subclass 457 visas.
(3) NEPALESE NATIONALS

The information below relates to the following Visitor visa subclasses for Nepalese nationals:

- Subclass 456 - Business (Short Stay);
- Subclass 459 - Sponsored Business Visitor (Short Stay);
- Subclass 675 - Medical Treatment (Short Stay);
- Subclass 676 - Tourist (Short Stay);
- Subclass 679 - Sponsored Family Visitor (Short Stay);
- Subclass 685 - Medical Treatment (Long Stay);
- Subclass 686 - Tourist (Long Stay).

### Visitor visas

<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Applications lodged</td>
<td>1,355</td>
<td>1,302</td>
</tr>
<tr>
<td>Applications withdrawn</td>
<td>16</td>
<td>23</td>
</tr>
<tr>
<td>Applications approved (visas granted)</td>
<td>836</td>
<td>662</td>
</tr>
<tr>
<td>Applications refused</td>
<td>500</td>
<td>612</td>
</tr>
<tr>
<td>In progress*</td>
<td>36(2.66%)</td>
<td>35(2.69%)</td>
</tr>
</tbody>
</table>

*Not all applications are decided in the year they are lodged

Review: 15 Visitor visa refusal decisions in 2001-02 in regard to Nepalese nationals were appealed at the MRT. Of these, nine (9) were approved on appeal, three (3) upheld the original decision and three (3) were otherwise finalised. 22 decisions were appealed in 2002-03. Of these 16 were approved, three (3) are as yet undecided and three (3) were otherwise finalised.

Processing times: The following table lists the median processing time for Visitor visa and subclass 457 visa applications lodged by Nepalese nationals.

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>456</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>457</td>
<td>36</td>
<td>86</td>
</tr>
<tr>
<td>459</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>675</td>
<td>11</td>
<td>90</td>
</tr>
<tr>
<td>676</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>679</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>685</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>686</td>
<td>13</td>
<td>20</td>
</tr>
</tbody>
</table>

Median processing time in days for Visitor Visa applications lodged by Nepalese nationals.

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>456</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>457</td>
<td>36</td>
<td>86</td>
</tr>
<tr>
<td>459</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>675</td>
<td>11</td>
<td>90</td>
</tr>
<tr>
<td>676</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>679</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>685</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>686</td>
<td>13</td>
<td>20</td>
</tr>
</tbody>
</table>

Visa application charges: See Attachment A.

Bonds: The average bond lodged by sponsors of Nepalese applicants for subclass 679 visas was AUD $8,000 in 2001-02, and AUD$10,000 in 2002-03.

Interviews: The Department does not record the numbers of applicants are interviewed for Visitor or Business visas.

Subclass 457 Temporary Business (Long Stay) visas

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications lodged</td>
<td>68</td>
<td>54</td>
</tr>
<tr>
<td>Applications withdrawn</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Applications approved (visas granted)</td>
<td>75</td>
<td>72</td>
</tr>
<tr>
<td>Applications refused</td>
<td>21</td>
<td>11</td>
</tr>
<tr>
<td>In progress*</td>
<td>12(17.65%)</td>
<td>8(14.81%)</td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
QUESTIONS ON NOTICE

* Not all applications are decided in the year they are lodged

Review: Data on subclass 457 applications which were refused and then proceeded to appeal at the MRT is not readily available on a nationality or processing post basis.

Charge: The visa application charge for subclass 457 visas is $165.

Bond: There is no requirement or mechanism for sponsors to lodge bonds in regard to subclass 457 visas.

Interviews: The Department does not record numbers of applicants interviewed for subclass 457 visas.

(4) BRITISH NATIONALS

As well as all the Visitor visas for which Fijian and Nepalese nationals can apply, British nationals are also eligible to apply for Working Holiday Maker visas and Electronic Travel Authorities (ETA).

Australia’s Working Holidaymaker program is based on arrangements Australia has negotiated with a number of foreign countries. Currently, Australia has working holidaymaker arrangements with the United Kingdom, Canada, Finland, The Netherlands, The Republic of Ireland, The Republic of Korea, Japan, Malta, Germany, Sweden, Denmark, Norway, Australia, Italy and the Hong Kong Special Administrative Region of the People’s Republic of China.

The following information relates to the applications lodged by British nationals for the Visitor visa subclasses plus the subclass 417 visa as well as the subclass 457 Work Visa:

Visitor Visas:
- Subclass 456 - Business (Short Stay);
- Subclass 459 - Sponsored Business Visitor (Short Stay);
- Subclass 675 - Medical Treatment (short stay);
- Subclass 676 - Tourist (short stay);
- Subclass 679 - Sponsored Family Visitor (short stay);
- Subclass 685 - Medical Treatment (Long stay);
- Subclass 686 - Tourist (long stay);
- Subclass 956 - Electronic Travel Authority (Business Entrant-Long Validity);
- Subclass 976 - Electronic Travel Authority (Visitor); and,
- Subclass 977 - Electronic Travel Authority (Business Entrant-Short Validity).

Visa applications for British nationals

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications lodged</td>
<td>592,903</td>
<td>606,334</td>
</tr>
<tr>
<td>Applications withdrawn</td>
<td>387</td>
<td>506</td>
</tr>
<tr>
<td>Applications approved (visas granted)</td>
<td>591,794</td>
<td>605,133</td>
</tr>
<tr>
<td>Applications refused</td>
<td>338</td>
<td>437</td>
</tr>
<tr>
<td>In progress*</td>
<td>584(0.10%)</td>
<td>545(0.09%)</td>
</tr>
</tbody>
</table>

* Not all applications are decided in the year they are lodged

Review: No 2001-2002 refusal decisions were appealed to the MRT. One decision was appealed in 2002-2003; the original decision was upheld.

Visas which allow work (Subclass 457 Temporary Business (Long Stay) visas and subclass 417 Working Holiday visas)
QUESTIONS ON NOTICE


Applications lodged 47,335 47,906
Applications withdrawn 404 410
Applications approved (visas granted) 46,329 46,722
Applications refused 374 476
In progress* 1,126(2.38%) 1,211(2.53%)

*Not all applications are decided in the year they are lodged

Review: Data on subclass 457 applications which were refused and then proceeded to appeal at the MRT is not readily available on a nationality or processing post basis. Refusal decisions on subclass 417 visa applications do not have a review right.

Processing times: The table below lists the median processing time for applications lodged by British nationals.

Median processing time in days for Visitor visa applications lodged by British nationals.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>417</td>
<td>0**</td>
<td>0**</td>
</tr>
<tr>
<td>456</td>
<td>0**</td>
<td>0**</td>
</tr>
<tr>
<td>457</td>
<td>22</td>
<td>28</td>
</tr>
<tr>
<td>459</td>
<td>1</td>
<td>n/l</td>
</tr>
<tr>
<td>675</td>
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<td>4</td>
</tr>
<tr>
<td>676</td>
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<td>686</td>
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</tr>
<tr>
<td>956</td>
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<td>0**</td>
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<tr>
<td>976</td>
<td>0**</td>
<td>0**</td>
</tr>
<tr>
<td>977</td>
<td>0**</td>
<td>0**</td>
</tr>
</tbody>
</table>

n/l = no applications lodged.

**Applications processed on lodgement when lodged online, or immediately over the counter.

Visa application charges: See Attachment A. The majority of British applicants lodged visa Subclass 976 applications. There is no Australian Government charge for ETAs. Some travel agents who process applications impose their own charge.

Bonds: No bonds were required to be lodged by sponsors of British applicants in 2001-02. In 2002-03, two sponsors were required to lodge bonds of AUD$10,000 each.

Interviews: The Department does not record numbers of applicants interviewed for the above visas.

(5) (a) GUIDELINES

All visa applications are assessed against the criteria for the specific type of visa sought. These criteria are set out in Australia’s migration legislation, the Migration Act 1958 and the Migration Regulations 1994.

Guidelines for departmental officers are included in the Department of Immigration and Multicultural and Indigenous Affairs’ (DIMIA’s) Procedures Advice Manuals (PAM3), Migration Series of Instructions (MSIs), and in directions made by the Minister under Section 499 of the Act.

All Migration legislation is available to the public via the www.scaleplus.law.gov.au website. Section 499 directions must be tabled in Parliament so are also available to the public. The migration legislation and section 499 directions, together with PAM3 and those MSIs, are publicly available under the Freedom of Information Act. They are also available to persons, including
migration agents, who subscribe through DIMIA to LEGENDcom. Information on this service is contained on the Department’s website at www.immi.gov.au.

(b) PRESENCE OF FAMILY MEMBERS IN AUSTRALIA
The presence in Australia of members of an applicant’s family is not of itself a reason for either approving or rejecting a visa application. At the same time, the immigration history of family members in Australia, or of persons lodging letters of support, is a relevant consideration. By law, if an applicant meets the criteria for the visa sought, they must be granted a visa. Similarly, if they do not meet the criteria, then by law, they cannot be granted the visa.

The legal criteria for the grant of a visitor visa require, among other things, that an applicant meets Australia’s health and character standards, has adequate funds for support for the period of the visit, and intends a genuine visit to Australia.

In reaching a finding on the intention to make a genuine visit, decision-makers are also required to draw on local experience in reaching a considered view of the level of risk posed by the visitor applicant. Visitor overstay rates, the level of incidence of visitors seeking longer term temporary or permanent residence once in Australia, and local conditions which can contribute to a higher degree of non-compliance with visitor visa conditions form part of this context.

ATTACHMENT A

Scheduled Fees for Visa Applications

<table>
<thead>
<tr>
<th>Visa Subclass</th>
<th>1 July 2001 to 30 June 2002</th>
<th>1 July 2002 to 30 June 2003</th>
<th>1 July 2003 (valid as at 29 February 2004)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Onshore</td>
<td>Offshore</td>
<td>Onshore</td>
</tr>
<tr>
<td>417</td>
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<td>$155.00</td>
<td>n/a</td>
</tr>
<tr>
<td>456</td>
<td>n/a</td>
<td>$60.00</td>
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</tr>
<tr>
<td>457</td>
<td>$155.00</td>
<td>$155.00</td>
<td>$160.00</td>
</tr>
<tr>
<td>459**</td>
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<td>$60.00</td>
<td>n/a</td>
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<tr>
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<td>$60.00</td>
<td>$155.00</td>
<td>$160.00</td>
</tr>
<tr>
<td>679</td>
<td>n/a</td>
<td>$60.00</td>
<td>n/a</td>
</tr>
<tr>
<td>685**</td>
<td>$155.00</td>
<td>$40.00</td>
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</tr>
<tr>
<td>977</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

n/a=not applicable.

*From 1 March 2004, applications are lodged and processed in Australia.

**The charge only applies to onshore applications for a stay of more than 3 months and/or travel of more than one year.

**Agriculture: Wheat**

**(Question No. 2816)**

**Senator Brown** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 2 April 2004:

Is the Government aware of the claim by Tsutomu Shigeta, Executive Director of Japan’s Flour Millers Association (*Reuters*, 10 September 2003) that, ‘If there is GM [genetically-modified] wheat, there is some potential for the collapse of the US wheat market in Japan’.
Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

Yes.

Federal Election: Young People
(Question No. 2887)

Senator Brown asked the Special Minister of State, upon notice, on 6 May 2004:

(1) What activities has the Australian Electoral Commission (AEC) undertaken to encourage and ensure the maximum participation of young voters in the lead-up to and during the 2004 federal election.

(2) What advertising or outreach programs will be undertaken to increase the involvement of young people in the 2004 federal election.

(3) Has the AEC received any government direction or experienced any limitation in funding that may affect its capacity to maximise the involvement of young people in upcoming elections.

Senator Abetz—The answer to the honourable senator’s question is as follows:

(1) The following answer has been provided by the Australian Electoral Commission (AEC):

The AEC conducts a regular Schools and Community Visits Programme which involves divisional staff throughout Australia conducting public awareness sessions in schools and for community groups across 150 divisions. In 2002-03, the Schools and Community Visits Programme provided 146,000 participants with electoral education.

In addition, the AEC is conducting a national youth enrolment initiative called Rock Enrol throughout 2004. Rock Enrol is a joint initiative between the AEC and Australia’s national youth radio network Triple J, designed to raise awareness about enrolling and voting among eligible young Australians and to encourage and facilitate their enrolment.

The Rock Enrol youth enrolment promotion has involved the AEC having a presence at each of the six Big Day Out concerts held across Australia during January and February 2004 in the form of a Rock Enrol marquee where the AEC engaged with young people and encouraged them to enrol to vote. Young people who did not attend the Big Day Out concerts were still able to enrol to vote via a dedicated Rock Enrol website hosted by Triple J where enrolment forms could be downloaded for completion and return. The Rock Enrol promotion has also involved the AEC’s presence at various State-based community youth festivals in early 2004 to increase the involvement of young people in the electoral process by raising their awareness of enrolling and voting and facilitating their enrolment at the Rock Enrol marquee. Over 4,000 new enrolments have been received as at May 2004 as part of the Rock Enrol youth enrolment promotion.

Data-matching with Road Transport Authorities has also given the AEC better access to young people through targeted enrolment activities. For example, the use of demographic data from the New South Wales Roads and Traffic Authority has resulted in the enrolment rate of 18 year olds in New South Wales increasing from 41 per cent in January 2003 to 79 per cent in March 2003.

The following answer has been provided by the AEC:

(2) During the 2004 election, the AEC will conduct an advertising and public relations campaign designed to encourage the participation of young people in the electoral process. Activities to be conducted will include radio and television commercials targeted at youth, information sessions for youth groups and the development of information, stories and events for youth media outlets.

Other ongoing outreach programmes targeting the involvement of young people in forthcoming elections involves AEC representatives visiting schools and universities to raise awareness about enrolling and voting and encouraging eligible young Australians to enrol to vote.
In addition, the AEC’s Rock Enrol youth enrolment initiative is currently promoted via the dedicated Rock Enrol website hosted by Triple J, providing young people with information about enrolling and voting.

The AEC also placed advertising in a range of youth magazines in the middle of 2003.

(3) No. The Government has not issued any direction to the AEC which would affect its capacity to maximise the involvement of young people in forthcoming elections. As an independent statutory authority, the Government does not interfere in the way the AEC conducts its programmes.

The Government has allocated additional funding to the AEC totalling $34.4 million over five years from 2003-04. This additional funding will enable the AEC to meet its statutory obligations at a quality and standard expected by the Government ($28.1 million) and to support roll integrity activities ($6.3 million) from 2004-05. The additional funding was agreed by the Government following the outcomes of a resourcing review jointly conducted by the Department of Finance and Administration and the AEC.

Defence: Leopard Tanks

(Question No. 2927)

Senator Chris Evans asked the Minister for Defence, upon notice, on 17 May 2004:

With reference to the upgrades of Australia’s Leopard tanks that are currently underway and/or were planned under the 2000 White Paper and included in the 2001 Defence Capability Plan:

(1) (a) Which of the Leopard upgrade projects will continue, even though replacement tanks are now being purchased; and (b) given the decision to acquire replacement tanks, why are these upgrades continuing.

(2) (a) Which of the Leopard upgrade projects will not proceed because of the decision to acquire replacement tanks; and (b) for each of the projects that will cease, indicate whether the project has: (i) already gone to contract; or (ii) already been the subject of a request for tender.

(3) What is the value of the Leopard upgrade projects that have gone to contract but will cease as a result of the decision to acquire a replacement tank.

(4) For each of the Leopard upgrade projects under the 2000 White Paper that have gone to contract: (a) what is the name of the contractor; (b) when was the contract was signed; (c) what is the current budget for the project; (d) what is the current delivery date for the project; and (e) how much has been paid to the contractor under the contract.

(5) For each of the Leopard upgrade projects under the 2000 White Paper that have gone to contract, indicate: (a) whether the project will cease; (b) whether compensation will be paid as a result of the decision to cancel the project; (c) the value of any compensation that will be paid; and (d) whether the contractor has taken or has foreshadowed any legal action against the Commonwealth as a result of the decision to cancel the project.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) (a) Minor project Minor Capability Submission (Land) MINCS(L) 930.25 Driver’s Night Viewer, to replace the present obsolete viewer.

(b) The termination cost of the contract for new driver’s viewers was nearly the full contract value. In addition, the new viewers are common with those fitted, or planned to be fitted, to Australian Light Armoured Vehicles, M113 Armoured Personnel Carriers and Abrams M1A1 tanks, and can be removed from the Leopard tanks and used on other vehicles after the Leopard tanks are withdrawn from service. All equipment has been delivered.
QUESTIONS ON NOTICE

(2) (a)  
- Project Land 53 Phase 1D Leopard Tank Thermal Sight, to provide a thermal sight for the Leopard tank;  
- Minor project MINCS(L) 001.04 Leopard Crew Climate Control System, to provide cooling systems for tank crews;  
- Minor project MINCS(L) 001.05 Leopard Life-of-Type Extension, to modify obsolescent hydraulic controls on Leopard recovery and bridge variants, and to purchase life-of-type spares for the tank turrets which would no longer be supported by Germany; and  
- Minor project MINCS(L) 930.24 Commander’s Night Viewer, to replace the present obsolete viewer.

(b) (i)  
- Project Land 53 Phase 1D Leopard Tank Thermal Sight has gone to contract.  
- Minor project MINCS(L) 001.04 Leopard Crew Climate Control System, comprised several elements. Most elements have already been completed. The last element, the design and installation of a cool drinking water system, which is no longer proceeding, has not gone to contract and or been the subject of a request for tender.  
- Minor project MINCS(L) 001.05 Leopard Life-of-Type Extension, comprised several elements. Most elements had already been completed. The last elements, the purchase of additional gun barrels and a final review of spares requirements, which are no longer proceeding, have not gone to contract and or been the subject of a request for tender.  
- Minor project MINCS(L) 930.24 Commander’s Night Viewer had already gone to contract.

(ii) Not applicable.

(3)  
- Project Land 53 Phase 1D Leopard Tank Thermal Sight —$50.806m. Of this, $13.763m has been spent.  
- Minor project MINCS(L) 001.04 Leopard Crew Climate Control System —$14.571m. Of this, $5.385m has been spent.  
- Minor project MINCS(L) 001.05 Leopard Life-of-Type Extension —$17m. Of this, $10.372m has been spent.  
- Minor project MINCS(L) 930.24 Commander’s Night Viewer - $1.6m. Of this, $0.068m has been spent, including termination compensation of $61,850 to the contractor, ITT Night Vision.

(4) There are no Leopard upgrade projects under the 2000 White Paper. However, project Land 53 Phase 1D Leopard Tank Thermal Sight, detailed below, was approved in the subsequent 2001 Defence Capability Plan:  
(a) Thales Optronics Limited.  
(b) 29 August 2002.  
(c) $50.806m.  
(d) December 2005.  
(e) $12.925m.
(5) There are no Leopard upgrade projects under the 2000 White Paper. However, project Land 53 Phase 1D Leopard Tank Thermal Sight, detailed below, was approved in the subsequent 2001 Defence Capability Plan:

(a) The project will cease.
(b) Under contract provisions, no compensation will be paid as a result of the decision to cancel the project.
(c) See (b) above.
(d) No.

Defence: Abrams Tanks
(Question No. 2928)

Senator Chris Evans asked the Minister for Defence, upon notice, on 17 May 2004:

(1) Has the Queensland Government been advised of the weight and dimensions of: (a) the M1A1 Abrams tanks; and (b) the transporters for these tanks, given that they will operate on roads in Queensland.

(2) Has the Commonwealth consulted with the Queensland Government regarding the operability of the tanks and the tanks on their transporters, on Queensland roads.

(3) (a) Does the department consider that the tanks and transporters are suitable to operate on Queensland roads; and (b) does the department have any concerns regarding the suitability of using the tanks on: (i) the Gulf Development Road, (ii) the Peninsula Development Road and crossings of McLeod River between Mt Carbine and Lakeland, (iii) the two Hann River bridges, and (iv) Myall Creek near Weipa.

(4) Does the department know of other major roads in Queensland where the Abrams tanks, with or without transporters, will be unable to operate; if so, can a list be provided of these roads.

(5) What are the exact specifications (weight, dimensions, number of axles, number of wheels, etc) of the low-loaders which will be obtained as part of the Abrams tank deal.

(6) (a) How many low-loaders will be obtained; and (b) what will be the cost of these vehicles.

(7) (a) What fuel will these low-loaders use; and (b) from where will this fuel be sourced.

(8) Given the difficulties with using the roads in Far North Queensland, what arrangements have been made to transport the Abrams tanks, should they be required in that region.

(9) Given that seasonal flooding occurs in that area, what arrangements have been made to transport the Abrams tanks should they be required in Far North Queensland at the time of flooding.

(10) What will be the weight of the Abrams tanks acquired by Australia after they have been reconditioned and/or remanufactured to meet Australia’s requirements.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) and (2) No, but the Queensland Government will be consulted.

(3) (a) Yes, other than a restriction of movement across bridges rated at less than 100 tonnes.

(b) Defence has not examined the operation of the tanks on these areas.

(4) The major restriction on operation of the Abrams tanks and transporters remains the rated capacity of road bridges.

(5) These are not yet known. Defence plans to acquire or modify low-loaders as necessary to comply with Australian design rules.

(6) (a) Subject to final price, up to 14 M1A1 low-loaders will be obtained.

(b) Approximately $15m.
(7) (a) Diesel.
   (b) Extant departmental contractual arrangements with local suppliers.

(8) Defence will acquire appropriate transporters for the Abrams tanks. No other special arrangements have been made.

(9) No special arrangements have been made.

(10) Approximately 63.3 tonnes.

**Defence: Abrams Tanks**

**(Question No. 2930)**

Senator Chris Evans asked the Minister for Defence, upon notice, on 17 May 2004:

With reference to Project Land 907 of the 2004 Defence Capability Plan, under which refurbished M1A1 Abrams tanks will be acquired through the United States of America (US) Foreign Military Sales Program:

(1) Can a list be provided of all items that have been included as part of the deal under which Australia will acquire 59 M1A1 Abrams tanks from the US.

(2) Does the $550 million cost of the tanks include all of these additional items; if not: (a) which items are not included in the price; and (b) why not.

(3) Are any additional logistics elements required in order to support the tanks in operation overseas or in Australia; if so: (a) can a list be provided of any additional logistics elements that are not provided as part of the $550 million deal to acquire the tanks; and (b) what will these additional elements cost.

(4) (a) Can a list be provided of all modifications that will be made to the tanks that will be acquired by the Australian Army, compared with other M1A1 Abrams tanks that will remain in service in the US; and (b) when will each of these modifications be made and how much will each cost.

(5) Does the $550 million cost of the tanks include all of these modifications; if not: (a) which items are not included in the price; and (b) why not.

(6) (a) Is the department confident that none of these modifications will in any way affect the performance of the tank or the ability to undertake ongoing maintenance and/or through-life support; (b) what assurances has the department received in this regard; and (c) will this issue be covered in the contract to buy the tanks.

(7) (a) Can details be provided of the arrangements for the ongoing maintenance and/or through-life support of the tanks to be acquired by Australia; and (b) how long will this arrangement with the US continue.

(8) (a) How much is the ongoing maintenance and/or through-life support expected to cost each year; and (b) is this included in the announced price of $550 million.

(9) (a) Who will conduct the maintenance and/or through-life support for the M1A1 Abrams tanks; (b) how will this supplier be selected; and (c) will there be a tender round; if not, why not.

(10) Will Australian companies be able to compete for any maintenance and/or through-life support work in relation to the M1A1 Abrams tanks; if not, why not.

(11) Is there any Australian industry involvement included in the deal to acquire the tanks; if not, why not.

(12) Was the potential for Australian industry involvement taken into account when the decision was made to acquire these tanks over the other options that were considered by the department; if not, why not.
(13) Does the deal to acquire the tanks include provision of low-loaders and/or transporters that will enable the tanks to use roads and other infrastructure in Australia.

(14) Is the cost of acquiring the new low-loaders covered by the $550 million or is this an additional cost; if an additional cost, how much extra will the low-loaders cost.

(15) What are the dimensions of the transporters that have been acquired under the tank deal.

(16) Has permission been sought from local authorities in northern Australia to use the new transporters on roads in that region; if not: (a) why not; and (b) when will the appropriate permissions be sought.

(17) What sort of fuel will be used by the tanks that are being acquired by Australia.

(18) Is this fuel available in Australia.

(19) (a) If the fuel used by Australian tanks is different from that used by US M1A1 Abrams tanks, will this affect performance; and (b) what special maintenance arrangements are necessary because of the different fuel.

(20) (a) Is the department confident that the modification of the fuel system for Australian conditions will in no way be detrimental to the overall performance of the tank; (b) what assurances has the department received in this regard; and (c) will this issue be covered in the contract to buy the tanks.

(21) What sort of ammunition will be used by the tanks that are being acquired by Australia.

(22) Given that the ammunition used by Australian tanks is different from the ammunition used by US M1A1 Abrams tanks: (a) will this have any impact on tank performance; and (b) what special maintenance arrangements are necessary because of the different ammunition requirements.

(23) (a) Who will supply the ammunition for use in the M1A1 Abrams tanks; and (b) was an Australian supplier considered; if not, why not.

(24) (a) Who currently supplies the ammunition that is used by Australia’s Leopard tanks; and (b) was this supplier invited to indicate whether it could supply ammunition for use in the M1A1 Abrams tanks; if not, why not.

(25) (a) When does the contract with the current supplier of ammunition for the Leopard tanks expire; (b) what is the value of this contract; (c) will this contract be terminated early as a result of the decision to acquire replacement tanks; and (d) will compensation be paid to the supplier as a result of the decision to terminate the contract early; if not, why not.

(26) (a) Does the ammunition used by the M1A1 Abrams tanks require any changes to the current safety requirements for tank firing ranges; (b) what will be the cost of any changes to current safety requirements; and (c) is this included as part of the $550 million package announced by the Government.

(27) Will sub-calibre training ammunition be used to offset the cost of full-calibre training.

(28) (a) What are the new training requirements for the personnel who will be required to crew the M1A1 Abrams tanks; and (b) how does the training for the M1A1 Abrams tanks differ from the training that is currently given to operators of the Army’s Leopard tanks.

(29) (a) What will be the additional training cost for personnel who will crew the M1A1 Abrams tanks; and (b) are training costs included as part of the $550 million package announced by the Government.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) Acquisition of Abrams tanks from the United States (US) is presently planned to include:

- 59 Abrams M1A1 tanks;
• up to seven M88A2 Hercules armoured recovery vehicles;
• up to six advanced gunnery training simulators;
• one tank driver training simulator;
• initial stock of ammunition (offered by the US, but may be purchased separately);
• initial training of operational and maintenance staff;
• support and test equipment;
• radio’s and ancillary equipment;
• initial spares; and
• some project management.

The acquisition of Abrams tanks also includes the following elements from sources other than the US:
• up to 14 tank transporters (offered by the US, but may be purchased separately);
• eight fuel trucks (offered by the US, but planned to be purchased separately);
• upgrade to existing tank facilities; and
• some project management.

(2) Yes.
(3) No.
(4) (a)
• Modification of weapon mounting brackets to accommodate the crew’s Styer personal weapons.
• Inclusion of a receptacle to allow battery charging using battery chargers presently in Army service.
• Inclusion of elements of the Leopard 1 crew cooling, such as the provision of cool water.
• Integration of the Infantry Personal Role Radio presently in Army service.
(b) These modifications will be made during tank refurbishment in the US. Exact costs are not yet known as they are still subject to negotiation, but are expected to be minor.

(5) Yes.
(6) (a) Yes.
(b) The US Government has agreed to integrate these modifications into the tank without detriment to performance or supportability.
(c) Yes.
(7) (a) Detailed arrangements for through-life support of the tanks are still being developed. Defence plans to have the operational-level maintenance of tanks performed by Army staff, and all other maintenance of tanks and major systems will be performed by Australian industry. Defence is still examining whether to manage its own purchasing of spares or to contract out this activity to an Australian company. It is expected that Australian industry will manufacture some spares, similar to those presently provided locally for the Leopard 1 tanks. Interim support from the US Government may be required until Australian industry support infrastructure is established. This would involve an exchange program of unserviceable components for refurbished components with the US Army. Technical support for the tanks will be sourced from within Defence from Australian industry and from cooperative agreement with the US Army.

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(b) The duration of interim maintenance support from the US Army is unknown, but is expected to be relatively short. Cooperation with the US Army for technical support is likely to continue for the life of the tanks, particularly with regard to configuration management. The US Government has committed to these vehicles to at least 2020.

(8) (a) The expected annual maintenance and support cost will be approximately $15 million for an Abrams fleet annual rate of effort up to 65,000km.
(b) No.

(9) (a) The conduct of Abrams tank maintenance and through-life support is still being determined, but is expected to be conducted primarily by Australian industry.
(b) and (c) Through competitive tenders from Australian companies.

(10) Yes.

(11) Yes. Australian industry will be involved in aspects external to the US Government agreement, such as the upgrade of facilities and through-life support.

(12) Yes. All options considered offered similar level of Australian industry involvement.

(13) Yes.

(14) Yes.

(15) See my response to Senate Question on Notice No. 2928, part (5).

(16) (a) and (b) The immediate focus of project effort has been on definition of the capability requirement and development of the business case for the proposed acquisition. Consultation with local and other government authorities will occur at a date yet to be decided.

(17) See my response to Senate Question on Notice No. 2928 part (7) (a).

(18) Yes.

(19) (a) The fuel that will be used by the Australian M1A1s differs from that used by the US M1A1, but it will not affect the performance of the tank as the M1A1 engine is a multi-fuel engine capable of using a variety of fuels.
(b) None.

(20) (a) No modification of the fuel system is necessary.
(b) The US M1 tank used diesel fuel when it was originally introduced into US service, before the US adopted its present single fuel policy for aviation and ground forces. Defence is reviewing studies conducted by the US Government of its use of diesel fuel in the M1 tanks.
(c) No, unless the review of the US Government’s fuel studies indicate a need to do so.

(21) The M1A1 tank uses 120mm, 66mm, 12.7mm and 7.62mm ammunition. The 120mm ammunition is the primary ammunition used by the main gun, with various natures of 120mm ammunition available depending on the required effect.

(22) With the exception of depleted uranium ammunition, Australian tanks will use the same ammunition as that used by US M1A1 Abrams tanks.

(23) The ammunition will be procured through the Joint Ammunition and Logistics Organisation, which will use extant processes that are open to Australian industry.

(24) (a) Australia has used various suppliers. The last order of 105mm tank ammunition was provided by SNC Technologies Inc.
(b) No orders have been placed or tenders issued yet for supply of ammunition for the M1A1 tanks.

(b) $17.653 million.
(c) No. The ammunition is required for use by Leopard 1 tanks during their remaining life.
(d) Not applicable.

(26) (a) Yes. Changes will be required to range firing templates and other range procedures. However, no physical changes will be required to the ranges.
(b) Costs to cover the production of new range orders and other publications are unknown, but will be very minor.
(c) Yes.

(27) Yes.

(28) (a) Detailed new training requirements are still being defined by a full training needs analysis.
(b) The principles of training are the same as for the Leopard 1 tanks, but some changes will be necessary to reflect the different operating characteristics of the new equipment. The current approach is to adapt the US training into the existing Australian system. The M1A1 Abrams training will also incorporate increased use of training simulators.

(29) (a) See my response to (28) (a) above.
(b) Initial training costs, including the cost of attending US vehicle conversion training, are included in the package.